RECORD COPY

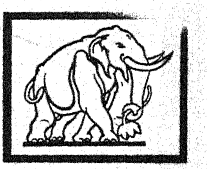
ADMINISTRATIVE ASPECTS OF FACTORY AND LABOUR LEGISLATION

Report of A Study Course Organised

By

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION
MAHARASHTRA REGIONAL BRANCH

64-6558
6.11.64



IIPA LIBRARY
6558

BOMBAY

POPULAR PRAKASHAN

© *Indian Institute of Public Administration*
Maharashtra Regional Branch
Sachivalaya, Bombay.

First Published
July 1964
Asad 1886

Printed by
M. R. Sirur
Sirur Printing Press
12th Khetwadi
Bombay 4 WB

Published by
G. R. Bhatkal
Popular Prakashan
35-C, Tardeo Road,
Bombay 34 WB

FOREWORD

The Maharashtra Regional Branch of the Indian Institute of Public Administration organised a series of discussion meetings on Administrative Aspects of Factory and Labour Legislation on 22nd, 23rd, 24th and 25th October 1962. The object of the discussions was to bring together the points of view of administration and factory managers so as to promote better understanding of the laws and the difficulties experienced in their implementation. The following Acts were discussed in four sessions held on four days.

First Session

Factories Act, 1948
Payment of Wages Act, 1936
Maternity Benefits Act, 1929

Second Session

Employees' State Insurance Act, 1949

Third Session

Bombay Industrial Relations Act, 1946
Industrial Disputes Act, 1947
Industrial Employment (Standing Orders) 1946
Code of Discipline

Fourth Session

Bombay Shops & Establishments Act, 1948
Minimum Wages Act, 1948
Personnel Management Advisory Service.

The course was attended by over 150 factory managers, personnel managers and works managers, etc. representing 110 companies in Maharashtra State. At each session there were two or three officials and two or three non-officials as main speakers. The course was inaugurated by Shri M. G. Mane, the Minister for Labour, Government of Maharashtra, who also presided over the First Session. Shri D. R. Pradhan, the then Chief Secretary to Government of Maharashtra, Shri D. S. Bakhle, Deputy Chairman, Bombay Millowners' Association, and Dr. K. S. Basu, Personnel Director of Hindustan Lever Ltd., presided over the Second, Third and Fourth Sessions respectively. The thanks of the Branch are due to them all as also to all official and non-official speakers who were good enough to participate in the discussion and to write papers to facilitate the discussion.

It is hoped that this record of proceedings of the discussion meetings on administrative aspects of factory and labour legislation will be found useful by factory managers, personnel officers and others interested in labour welfare.

Bombay,
March 1964.

N. S. PARDASANI,
Honorary Secretary.

CONTENTS

PART III

BACKGROUND PAPERS

PART ONE

WELCOME SPEECH

by

SHRI N. S. PARDASANI

It is my proud privilege and pleasure to welcome you all on behalf of the Maharashtra Regional Branch of the Indian Institute of Public Administration to this series of discussion meetings on administrative aspects of factory and labour legislation. I must thank you all for having kindly responded to our invitation and assure you that your presence in large numbers is a source of great encouragement and inspiration to the Institute.

I should first of all like to express our special thanks to you, Sir, for having kindly agreed to inaugurate this series of discussions and to preside at its first session this afternoon. Apart from being the Minister for Labour in which position you have naturally a unique opportunity of influencing the administration of factory and labour laws, you have, as a labour leader of long standing, intimate knowledge of the problems we are going to consider here and I am sure you will, therefore, have some valuable observations to make which would benefit both the official and the non-official speakers in the discussion.

You would perhaps like me to say a word about the general object of organising this series of discussion meetings which has, I am afraid, rather inappropriately been described by us as a study course. I think it will, in any case, be too pretentious for any organisation to claim to train persons of the calibre and experience of factory managers many of whom present here have had long and distinguished record of service to their credit. The object of the Institute is something much more modest, though I hope not less useful. We have tried to bring together face to face officials who are concerned with the administration of factory and labour laws and those actually engaged in their application in the various factories. What we, therefore, expect is a full and frank discussion at a practical level of those problems which are of common interest to them so that there is adequate appreciation of the different points of view on both sides. So far as labour policy in general is concerned, there are perhaps many other opportunities available at tripartite and other conferences

held at ministerial or official levels. The purpose of this series, however, is to invite attention to the more practical aspects relating to the problems met with from day to day rather than to questions of policy. Actually, we are only trying to bring together two sets of administrators whose experience is complementary and whose understanding of each other's point of view is essential for the fulfilment of the objects underlying factory and labour laws.

I am glad that the Branch has been able to bring together such a large number of high level and experienced personnel. The Branch has been exceptionally fortunate in having been able to secure the participation as main speakers of distinguished non-officials, whose intimate knowledge of labour matters would be of great assistance in the elucidation of the issues for discussion. It is gratifying to note that the highest officials in different labour fields both at the Central and State Government levels have also cooperated fully and that we have been able to get as Chairmen of our sessions persons eminently qualified by virtue of their position, experience and knowledge to give a lead in these discussions. I would like to take this opportunity of thanking them all for the generous co-operation they have agreed to extend to the Institute. It will not perhaps be out of place here to mention that due to physical limitations of space it has not, unfortunately, been possible for us to make more adequate arrangements for the conduct of these discussions. When we first considered the question of organising this series, our idea was to keep the number of participants to about fifty. We, however, found that the response to our invitation was so overwhelming that it was impossible for us to stick to that number. We had, therefore, no option but to obtain the largest possible hall and to accommodate as many of those wishing to participate as possible. Even so, I regret that we have to plead our inability to accommodate a large number of persons. I should, therefore, like to take this opportunity of expressing our own disappointment and to express the hope that there might be another occasion when we might be able to cater for the needs of those who are not present here to-day.

With these words may I now, Sir, request you to inaugurate this study course on Administrative Aspects of Factory and Labour Legislation.

INAUGURAL SPEECH

by

SHRI M. G. MANE

Minister for Labour.

Government of Maharashtra

I am extremely happy to inaugurate this study course of Administrative Aspects of Factory and Labour Legislation organised by the Indian Institute of Public Administration, Maharashtra Regional Branch. As you are aware, this Institute is doing very laudable work inasmuch as it provides for the study of public administration and allied subjects by organising study and training courses, conferences and discussion groups and also by undertaking research in matters relating to public administration and machinery of Government. In organising the present study course on Administrative Aspects of Factory and Labour Legislation, I must say that the Institute has gone a step further and has recognised the importance of private sector along with the public sector. The private sector has been playing a very important role in the development of our country and the necessity of an enlightened administrative machinery in the private sector cannot be over-emphasised. Among the participants in the present study course, I see several Factory Managers, Works and Assisttant Works Managers, Personnel and Assistant Personnel Managers, Government Officers, in fact the very cream of the administrative machinery in the private and public sector.

As you are aware, the Government of India and the Maharashtra State have passed several Acts like Factories Act, Payment of Wages Act, Maternity Benefits Act, Employees' State Insurance Act, Bombay Industrial Relations Act, Industrial Disputes Act, Minimum Wages Act, etc. for regularising the working conditions and other allied matters in the factories and other industrial establishments. It is necessary that the persons who are at the helm of the factories and other industrial establishments should have a thorough knowledge of all these labour legislations, as ultimately it is they who are responsible for the proper implementation of the various provisions of these Acts. It is our experience from the day-to-day working of the Labour Office that several

held at ministerial or official levels. The purpose of this series, however, is to invite attention to the more practical aspects relating to the problems met with from day to day rather than to questions of policy. Actually, we are only trying to bring together two sets of administrators whose experience is complementary and whose understanding of each other's point of view is essential for the fulfilment of the objects underlying factory and labour laws.

I am glad that the Branch has been able to bring together such a large number of high level and experienced personnel. The Branch has been exceptionally fortunate in having been able to secure the participation as main speakers of distinguished non-officials, whose intimate knowledge of labour matters would be of great assistance in the elucidation of the issues for discussion. It is gratifying to note that the highest officials in different labour fields both at the Central and State Government levels have also cooperated fully and that we have been able to get as Chairmen of our sessions persons eminently qualified by virtue of their position, experience and knowledge to give a lead in these discussions. I would like to take this opportunity of thanking them all for the generous co-operation they have agreed to extend to the Institute. It will not perhaps be out of place here to mention that due to physical limitations of space it has not, unfortunately, been possible for us to make more adequate arrangements for the conduct of these discussions. When we first considered the question of organising this series, our idea was to keep the number of participants to about fifty. We, however, found that the response to our invitation was so overwhelming that it was impossible for us to stick to that number. We had, therefore, no option but to obtain the largest possible hall and to accommodate as many of those wishing to participate as possible. Even so, I regret that we have to plead our inability to accommodate a large number of persons. I should, therefore, like to take this opportunity of expressing our own disappointment and to express the hope that there might be another occasion when we might be able to cater for the needs of those who are not present here to-day.

With these words may I now, Sir, request you to inaugurate this study course on Administrative Aspects of Factory and Labour Legislation.

INAUGURAL SPEECH

by

SHRI M. G. MANE

Minister for Labour.
Government of Maharashtra

I am extremely happy to inaugurate this study course of Administrative Aspects of Factory and Labour Legislation organised by the Indian Institute of Public Administration, Maharashtra Regional Branch. As you are aware, this Institute is doing very laudable work inasmuch as it provides for the study of public administration and allied subjects by organising study and training courses, conferences and discussion groups and also by undertaking research in matters relating to public administration and machinery of Government. In organising the present study course on Administrative Aspects of Factory and Labour Legislation, I must say that the Institute has gone a step further and has recognised the importance of private sector along with the public sector. The private sector has been playing a very important role in the development of our country and the necessity of an enlightened administrative machinery in the private sector cannot be over-emphasised. Among the participants in the present study course, I see several Factory Managers, Works and Assistant Works Managers, Personnel and Assistant Personnel Managers, Government Officers, in fact the very cream of the administrative machinery in the private and public sector.

As you are aware, the Government of India and the Maharashtra State have passed several Acts like Factories Act, Payment of Wages Act, Maternity Benefits Act, Employees' State Insurance Act, Bombay Industrial Relations Act, Industrial Disputes Act, Minimum Wages Act, etc. for regularising the working conditions and other allied matters in the factories and other industrial establishments. It is necessary that the persons who are at the helm of the factories and other industrial establishments should have a thorough knowledge of all these labour legislations, as ultimately it is they who are responsible for the proper implementation of the various provisions of these Acts. It is our experience from the day-to-day working of the Labour Office that several

disputes could be avoided if the persons in charge acted judiciously and in accordance with the requirements of the provisions of the Acts. Very often sudden strikes occur because of indiscriminatory action of the persons in charge, such as summarily dismissing a worker without any enquiry or investigation for a major or minor misconduct. If the persons in charge of the establishments like the works manager or the factory manager are thoroughly acquainted with the various provisions of labour legislation then they would not take any hasty action under any circumstances, but are bound to follow the legal procedure of taking proper action against the defaulting workmen and fulfil all the principles of natural justice. We all agree that discipline must be maintained in any case in the industrial establishments, but in doing so it is absolutely necessary that the proper procedure is followed to the satisfaction of all parties concerned. This is possible only if the persons who are at the helm of the affairs of the industrial establishments are fully aware of the provisions of the various labour legislation.

There is an impression that it is the duty of the leader or personnel officers to attend to all the provisions of the labour legislation. The production manager or the works manager desires that certain things must be done or certain changes must be introduced and he wants them to be done immediately irrespective as to whether they are feasible under the labour legislation or not. Often it happens that it is ultimately the labour officer of the establishment who has to bear the burden of blame for the various actions taken or changes introduced by the management. This would not be the position if the works manager or the production manager or the technical director, as the case may be, is aware of the provisions of the labour legislation and appreciates the various requirements of these legislations. He would not then insist that what he desires must be done immediately on the spot. He would allow the personnel officers or the labour officer to follow the proper procedure, which would satisfy the workmen also. From this point of view the study course now undertaken on the administrative aspects of the various factories Acts and labour legislation is doubly welcome. I was hoping that such a study course for the managerial and supervisory staff in factories

and industrial establishments would be introduced at the earliest convenience.

You are aware that the Central Government has been conducting workers' education classes for the last four years in which the industrial workers are given training within the factory premises and are acquainted with the various labour legislation applicable to them and other allied subjects. The State Government also has been conducting similar classes in Greater Bombay where the workmen in the industry are thus being trained very fast in labour legislation. It must be expected that the managerial staff also gets such a training. We all appreciate that there should not be such a stage where the workmen would be knowing of labour legislation better than a supervisor. Ordinarily, the supervisors and the managerial staff are so busy with their own work that they have got very little time for studying the various aspects and problems of labour legislation. Such study courses like the present one are, therefore, very much welcome as they afford opportunity to the supervisory staff for getting training in the labour legislation.

I need not over-emphasise the need of industrial peace at the present juncture when our country is rapidly expanding industrially. Any friction between the management and the labour at this juncture, which will affect production, must be avoided at any cost. Industrial peace can be built up on the proper understanding of the problems of each other by the employers and the employees and making every effort to solve them peacefully across the table. I would strongly advocate the use of mutual negotiation machinery, the conciliation and arbitration machinery, under the State and Central labour legislation for solving all disputes between the employer and the employees. For achieving such an industrial peace enlightened management and labour is an absolute necessity and I sincerely hope that the present study course on the Administrative Aspects of Factory and Labour Legislation will take a long stride in the direction of absolute industrial peace.

I thank you once again for giving me this opportunity to inaugurate this study course.

PART TWO

FACTORIES ACT, 1948
PAYMENT OF WAGES ACT, 1936
BOMBAY MATERNITY BENEFITS ACT, 1929

Chairman

Shri M. G. Mane,

Minister for Labour,
Government of Maharashtra,

* * * *

Summary of Discussion

Shri S. V. Utamsingh referred to Section 92[1] of the Factories Act which stated that if in *any* factory, there was contravention of *any* of the provisions of the Act or *any* Rules made under it or of *any* order in writing given under it, the occupier and manager should both be fined and imprisoned. He posed a question as to why the Inspectors should not be invested with wide powers under the Act so as to allow them to exercise their discretion on the basis of facts. He mentioned a case of a contractor engaged in loading and unloading work in a factory outside the Maharashtra State, who was prosecuted on the ground that the overtime register maintained by him was not in the prescribed form. The register though not in prescribed form furnished all the relevant information. The Factory Inspector

---

1. Section 92 of the Factories Act, 1948, is reproduced below:—

Section 92-General penalty for offences.—Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both, and if the contravention is continued after conviction with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued.

was also convinced that no harm was done in maintenance of the overtime register in a form other than the prescribed one and that payment was made for the overtime work to the workers. And yet the contractor was prosecuted without his being told of the violation of the rules and without giving him any opportunity to rectify the violation which was merely technical. He suggested that the Factory Inspectors should be invested with discretionary powers to decide whether the violation of law was technical, serious or minor and should be authorised to put the matters right if the violation was a minor one.

He referred to Section 88[2] of the Factories Act which lays down that if an accident occurs which causes death or any bodily injury by reason of which the person injured is prevented from working for a period of 48 hours or more, the notice of accident should be sent by the employer in *such* form, and to *such* authorities and within *such* time as may be prescribed. Most of the rules made by the State Government require an employer to send notice of accident by telephone, special messenger or telegram to the Inspector and to confirm such notice by a written report in the prescribed form within 12 hours of the occurrence. In his opinion, it was unnecessary for an employer to send a notice of accident which is not likely to cause disability for more than 21 days immediately and confirm such notice by submitting a written report within 12 hours. He preferred the provisions regarding notification of accidents as provided in Section 23 of the Mines Act, 1952. Section 23(3) of that Act provides for the maintenance of a register in the prescribed form for such accidents other than fatal or causing serious bodily injury, which cause bodily injury resulting in the enforced absence from work of the person for a period of 48 hours. A copy of the entries in such a register is required to be sent to the Chief Inspector once a year.

---

2. Section 88 of the Factories Act, 1948, is reproduced below:—88. Notice of certain accidents:—Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities and in such form and within such time, as may be prescribed.

Regarding a change in periods of work in a factory, which would necessitate a change in the notice referred to Section 61(1)[3] of the Factories Act, he suggested that a prior notice to the Factory Inspector in that connection was not necessary and that the communication of change after introduction should be permissible.

He also referred to the provisions of the Factories Act regarding computation of wages of a worker during leave period and stated that the term "wage" had been defined so as to include cash equivalent of concessions in kind as a result of which wages in leave period tended to be the same as in period of duty.

Shri Utamsingh also complained about the restricted character of 'authorized deduction' under the Payment of Wages Act. Some of the employers had welfare schemes and benefit funds under which various amenities like interest-free loan for education, etc. were given to workers. They, however, experienced difficulties with Government Inspectors when recoveries of such loans advanced under these welfare schemes were to be made from the wages of the workers beyond the authorized deductions.

Shri G. K. Ved traced in brief the history of the Factories Act and stated that the factory legislation had grown substantially since its incorporation. Changes in the Act necessitated incorporation of explanations from time to time, which in its wake created difficulties for the employers. An increase in the number of sections of the Act also required more qualified people to get into the management of factories and also in the administration of the Act. The subsequent changes in the Act also created a position of a welfare officer who played a role of an adviser to the manager of a factory without any powers for execution. In the prevailing circumstances, the man on the job in a factory tried either to find solutions for compliance with the multifarious provisions of the Factories Act or to avoid their

---

3. Section 61 (1) of the Factories Act, 1948 is reproduced below:—61 (1) —Notice of periods of work for adults.—There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of Section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

applications. If he resorted to the latter course, the law stepped in. He referred to the prevailing Factories Act which was introduced in 1948 and felt that there were many provisions in the Act which created an impression that the Factory Inspector was meant to be a sort of a Police Inspector rather than a consultant who would guide men in the industry. Time had come to conceive of such an Act which would lead to harmony among the factory-owners and administrators and contribute to national progress.

He mentioned the difficulties of a person starting a factory. In the process of starting a factory, an entrepreneur had to contact a number of persons and fill in prescribed forms running into a number of pages. If he was unable to understand the questions put in the forms, he was required to approach some one who understood them to ensure compliance of the provisions of the Act. Shri Ved viewed that the Factory Inspector should adopt service approach in implementation of the Act, so that if anybody who wanted to start a factory could go to the Factory Inspector for guidance in the matter. In the existing circumstances people were not inclined to go to Factory Inspector for such advice and guidance, because they felt that if he was approached, he would only point out the defects in compliance with the provisions of the Factories Act, and in that process a valuable time would be lost in starting the factory in spite of the availability of money and resources needed. He felt that it was necessary to change our mode of approach, so that the Factory Inspector would act like a consultant, helper or an honorary adviser in all difficulties experienced in setting up a factory. Small defects in compliance with the provisions of the Act should not come in the way of starting a factory and the same could be remedied later when the factory started functioning. Such approach would promote better understanding between the factory managers and the administration and a faster rate of growth.

He pleaded that some of the provisions of the Factories Act should not be made applicable to small factories which might be brought under the Shops and Establishments Act. This, he said, was necessary because though only two to three per cent of people violated the provisions of the law which were very

comprehensive, general application of the law made it compulsory for all factories irrespective of their sizes to comply with them. As in our country there was quite a large number of small scale entrepreneurs as compared to big capital, they should be allowed to come up with small factories by giving them an understanding that rigid rules of the Factories Act would not be applicable to small factories. Regarding the position of a welfare officer in a factory, he said that if the Government felt that a welfare officer was necessary for a factory, he should be given a sufficient status and invested with powers, so that it would ensure better execution, availability of information, understanding and guidance in factory management.

He did not agree with a view that overtime work in a factory was exploitation of workers and suggested that there should be reasonable provisions for payment of overtime to workers who by their own technique, hard work and capacity did something to improve their own standard of living without endangering their health. He denied that the job of a factory manager was to hide things from the inspectorate and concluded by saying that it would be a step towards progress if the factory inspectorate changed its role and became a day to day consultant and adviser to the industry.

Shri N. L. Gadkari stated that he had an impression that factory management possibly had not any difficulties in connection with the Factories Act or the understanding or the purposes of the Factories Act, but the discussion at the meeting dispelled his impressions. He observed that there was some kind of misunderstanding among the factory management in respect of the working of the Factory Inspectorate, which might be due to the fact that the inspectorate was not good at publicity and did not issue attractive pamphlets for the attention of the people and was trying to educate itself and the factory management in the provisions of the Factories Act. He stated that it was also not true that the Factory Inspectors were functioning like Police Inspectors and added that if it were so, the Factory Inspectors would always be attending cases in the courts of Presidency Magistrates, and that the Inspectorate had been sparing the rod all the time except in respect of those persons who went out of their way to do certain things against the legislation. It is the

function of the inspectorate to interpret the law of the legislature as it stands in the statute book and not to allow latitude in its implementation.

He referred to a case cited by a speaker where contractor of a factory was prosecuted for not keeping the overtime register in prescribed form and pointed out that overtime working was not permissible unless a special permission was obtained. The punishment imposed on the contractor should have been imposed on the manager or occupier of a factory, as primarily it was the duty of a factory manager to see what was going on in the factory premises and also to safeguard the interest of workers. In most of the cases where a factory was working overtime without getting previous permission, the employers exploited the employees by paying them for a period less than that actually put in. He stated that overtime register was to be maintained in a form prescribed by the Act in the interest of workers. Whenever the Factory Inspectorate was approached by a factory for working overtime on a particular occasion in order to complete certain work, permission was normally given. The inspectorate usually permits factories to work overtime if the request was made on a reasonable ground. It was not necessary that request for permission to work overtime should come sufficiently in advance and in writing; it could even be made on telephone. It was always ready to co-operate with and help the factory management. If there are any changes in the periods of work, they are required to be communicated to the Factory Department.

If changes in periods of work are not notified to the Inspector, it is always possible for the management to plead when detected working overtime that they changed the hours of work for the day. In fact even with the present regulations, attempts are made to put up on the notice board a time table changing the hours of work to include the overtime period beyond the normal periods of work.

He observed that ordinary care and caution were absent in most of the factories and suggested that the employers should deal with all problems in respect of workers with a human approach. He stated that it was not correct to say that old and unnecessary forms and rules were being followed under the

Factories Act and clarified that after Independence the procedures were revised in tune with the changed circumstances in consultation with the representatives of labour, employers, and the Government. Tripartite agreements, wherever they existed, were also honoured.

He observed that it was not without any meaning that the forms to be filled in cases of accidents were drawn, as certain factories did not even notify the accidents in their premises. If ordinary precautions were taken, a majority of the accidents would be avoided. It was not sufficient to record in a register the details of an accident but the incident must be reported to the Inspector of Factories in respect of factories and to the Inspector of Mines in respect of Mines. In absence of a report to the Inspector the tendency to suppress the information regarding accidents would increase. If an accident took place, the treatment in a factory was not prompt and adequate; at least first-aid should be given to the injured. In some of the factories, there were not proper facilities even for first-aid. He maintained that it was no use pointing out an accusing finger at the Government when employers were failing on their part.

Referring to a point raised regarding delays in sanctioning the starting of a factory, he stated that it was reasonable that there should be adequate ventilation, light, water and other sanitary facilities before a factory is started. The Factory Inspector was often approached for approval when factory building had already been constructed. It was not possible to elevate the height of a window or lower it according to the rules, once the window had been fixed. By such action the factory-owner made it impossible for the Inspectors to co-operate with them. He posed the question as to what was the difficulty in approaching the Factory Inspectors in the initial stages of a proposal of starting a factory and taking their advice in the matter. He mentioned that it was a duty of the Factory Inspectors to co-operate with the factory-owners, to guide and advise them, and requested the entrepreneurs to consult the Factory Inspectorate in the construction of a factory building in the initial stages.

He mentioned that the factory rules prevalent in Maharashtra State were more or less applicable to the whole of India. In

Maharashtra, the Factory Inspectorate had always been consulting the employers and employees in application of factory rules and that whenever an action was proposed to be taken, viewpoints of both the parties were obtained in the matter.

Regarding administration of the Maternity Benefits Act, he observed that anything that was conducive to harmonious relations between the employers and employees was taken advantage of.

Regarding payment of wages, *Shri V. S. Mulekar* observed that the time-limits for payment of wages to a worker were laid down by the Payment of Wages Act and the administration had no powers to permit any variations. Section 5 of the Act lays down time-limit for payment of wages to a worker when he is in employment and when his services are terminated. When a worker is in employment, he must be paid within seven days after the last day of a period in respect of which wages are payable. In factories each employing more than 1,000 workers wages could be paid up to the tenth day. In a case where the employment of a worker is terminated the wages must be paid before the expiry of the second working day from the day on which his employment is terminated.

He referred to the point raised by a speaker that loans advanced to workers under various welfare schemes were not allowed to be deducted from the wages and remarked that if certain advances were given to the workers by the employer against the wages which were likely to balance in future, then the deductions were permissible under the rules. But, he continued, if there was some agency other than the employer who advanced certain sums to the workers, the employers were not allowed to make any deductions from wages unless it was proved that the scheme under which loans were paid was an amenity and was approved as such by the State Government.

The Payment of Wages Act has created two authorities to hear and decide claims arising out of deductions. If the wages are not paid in time as required or if wages are not paid in compliance with Section 7 of the Act, an application can be made under section 15(2) to the requisite authority. Though the delay may sometimes be due to genuine reason like financial difficulty, it should not occur because it creates vicious circle.

If the workers are paid late, there would not be maximum output and the overall earnings would be diminished because the workers would find it difficult to secure everyday necessities and to keep regular attendance.

The employer, he added, should, therefore, avoid delay and payment of wages should be made as far as possible within the limits laid down by the Act. Shri Mulekar referred to the maintenance of registers and observed that as the majority of workers were illiterate and ignorant, the maintenance of correct registers was the sole responsibility of employers and concluded by saying that if the registers were maintained rightly and correctly, the tasks of the Factory Inspector would be easy.

Shri Y. D. Joshi observed that there was not any contravention of provisions regarding sanitary convenience, holidays, overtime, hours of work, etc. in a big factory and that the administration of the Factory Inspectorate was fairly good. He stated that the difficulties experienced by him, one under the Factories Act and the second under the Payment of Wages Act, were very different and untouched by the previous speakers.

As regards the Factories Act, he stated that though legal judgements were pronounced on the various definitions in the Act, some of them were still controversial. He referred to two of such definitions. Dealing with a definition of 'factory', he said that though the Act had been into operation for a period of about fifteen years, it was not yet quite clear whether the factory was a place where the manufacturing process was situated or the whole area surrounding the manufacturing process and enclosed by boundary walls, if any. He then referred to the problem of classification of motor drivers as industrial workers and a circular issued by the Commissioner of Labour to every establishment for filling in of returns under the Motor Transport Workers Act, which *inter alia* stated that if the establishment was covered under the Shops and Establishments Act, it would not be covered under the Motor Transport Workers Act, and raised the point whether a driver who sat outside the office and worked outside the commercial establishment could be said to have been covered by the Shops and Establishments Act and hence whether the Motor Transport Workers Act would not be applicable to him. He raised this point

because in a case in Bihar it was held that the employees like drivers and watchmen who worked outside the premises of shops and commercial establishments were not covered by the Shops and Establishments Act. He observed that some words in the definition of a worker given in the Factories Act "a person employed directly or through any agency" were not satisfactory and though conflicting judgements of various courts were available, the problem of correct definition of the term was not yet settled. The words "any agency" in the definition would mean a contractor doing loading and unloading work in a factory or even an employment exchange. In one case, the Supreme Court ruled that the term 'through any agency' would not mean contractor and hence the person concerned would not be a worker under the Factories Act.

Shri Joshi then referred to the difficulties experienced in case of deductions under the Payment of Wages Act and observed that the employers were prevented from making deductions except for the acts of misconduct under the provisions of the Act. There were a number of conflicting judgements on the issues of jurisdiction of authority under the Payment of Wages Act and on what amounted to a deduction.

He referred to Section 7 of the Payment of Wages Act, which laid down that any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed, of penalties by way of (i) withholding of increment or promotion, (ii) the reduction to a lower post or stage in a time scale or (iii) suspension, shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty were in conformity with the requirements specified by the State Government, and stated that the State Government, by the notification issued in 1958 required that a memorandum should be given to an employee for deduction in respect of withholding of increment and reduction to a lower post. This notification, he observed, did not mention deduction by way of suspension. Thus, in case of withholding an increment and demotion an employer was supposed to give a memorandum or he must have his own rules or standing orders. If an establishment did not have standing orders and an employee was

found guilty after an inquiry of a minor misconduct, for which some sort of suspension would be a sufficient punishment, the employer would not be in a position to suspend him because it had been held by several courts that the employer did not have a right to suspend an employee if there were no service rules.

He also observed that the wording of provisions in Section 7 of the Act was such that an employee was entitled to an automatic increment irrespective of his work, provided he did not commit any misconduct. The only remedy left in the hands of the employer was either to discharge or dismisss an employee whose work was not found satisfactory. This, he said, was against the interests of the employees themselves.

Shri G. M. Kolhatkar explained in the beginning a few points raised by previous speakers regarding the definitions of a factory and workers under the Factories Act. He stated that there was an old High Court Judgement which made it clear that premises and precincts of a factory were included in the definition of a factory. It could, therefore, be stated that a factory includes its premises and precincts in addition to factory building. Regarding classification of a motor car driver, he observed that the Factory Inspectorate did not hold drivers as workers under the Factories Act unless their duties were such that they had to work within the premises of a factory. Whether they were covered by the Shops and Establishments Act could be answered by the Commissioner of Labour who was responsible for the administration of the Act. As regards to the service attitude of Factory Inspectors, he urged the factory management to co-operate with the Factory Inspectorate in administration of the Act. On the basis of his experience he felt that proper action on the part of managers or the representatives of the management would help the administration in implementing the Act, which, so long as it was unchanged, was the joint responsibility of the administration and the factory management. If, however, the employers wanted to change the provisions it could be done by moving the Parliament in the matter.

Co-operation for better implementation of the Act, he continued, implied sufficient powers for the factory managers. However, there were cases where the managers were neither properly

qualified or well versed in the enactments for implementation of which they were responsible nor sufficiently vested with authority to sanction execution. It was noticed that some managers were appointed with a view to make them attend courts to face prosecutions. He stated that he came across cases where the managers were hardly present in the factories and inquiries indicated that they were in courts, and that if by any chance they happened to be in the factories, they were hardly able to give satisfactory information relating to the factories. Some factory-owners appointed some one as a manager of factory without giving him the necessary powers and when he was asked by the Factory Inspector about certain matters his answer was that he did not know exactly what was happening regarding the matter in the factory. He was placed in an awkward position. He observed that though a manager might have to look after multifarious activities, he should be in a position to furnish information about his factory when called upon to do so. This state of affairs existed, he remarked, possibly to save the trouble of technical experts and heads of the departments who were mainly tied down to production. Such arrangement was not fair and the departmental heads should fairly and squarely undertake the responsibility for their sections.

It was open for managers to seek advice and guidance from the Factory Inspectors or higher officers. But in any case, they should endeavour to ensure quick execution and avoid delaying tactics in the matter of compliance with the provisions of the Factories Act. The first step in this direction would be that they should take up necessary powers and responsibilities as managers. In doing so, managers having non-technical qualifications should cultivate good relations with the technical heads of departments.

Shri Kolhatkar stated that though the factory inspection staff found technical experts in various factories to be obstructive, probably on the advice of factory management, some technical experts, on the other hand, took assistance of the Factory Inspectors in getting improvements in factory maintenance. He cited from his experience an incident in an engineering organisation where maintenance was poor. The engineer in the factory attributed it to

bad quality of equipment and invited strong remarks from the Factory Inspector. When he did so, it was seen at the time of his next inspection that immediate steps were taken by the management to effect the necessary improvements. He quoted a few more instances and welcomed this attitude on the part of technical experts and advised them to use similar methods for achieving improvements in factory maintenance or conditions. In order to facilitate their work, he gave a hint. In the standard inspection book at the back of the page for remarks of the Inspectors, there was a page marked for remarks of the manager. This was provided with a purpose. In case the manager had to take up certain matter with the owners for sanction and the work was held up for that, he could make a note to that effect so that at the time of inspection the Factory Inspector would note the fact for necessary further action.

Regarding compliance with the remarks made by the Factory Inspectors, Shri Kolhatkar stated that the managers should see that the compliance was prompt and real. Only issuance of circular to sectional heads asking them to take necessary steps was not sufficient. He must satisfy himself that there was factual execution of actions needed. If the manager was not a technical expert, he should allow his technical staff to discuss their difficulties with the Factory Inspector so as to ensure quick decision and action.

He referred to an increasing tendency on the part of workers or leaders of workers' union working in the factories to refer their complaints to the Factory Inspectors on their visits to factories. While conceding the maintenance of discipline in a factory was necessary, the Inspectors entertained such complaints provided they were made in proper manner and without vindictive spirit, as the Factories Act was mainly meant for the safety, welfare and health of the workers. It could be found on the spot that either the position regarding certain matters was not satisfactory or that the complaint was malicious. The Inspectors were sufficiently experienced to understand genuine and malicious complaints and took decisions on the spot. This would incidentally allow factory managers to check on their grievance machinery whether it was working satisfactorily or not. Periodical and sample checks on

matters on which Inspectors were frequently complaining would be of great help to managers for getting matters rectified in time and help to tie up the loose ends in the factory administration right from the safety matters to welfare measures. On safety matters particularly the advice of Inspectors was important, as they were a sort of mobile machinery reaching managers with varied experience and as such normally should give sound suggestions.

On the matter of accidents, Shri Kolhatkar observed that the most important thing was to ensure prompt first-aid and removal of injured worker to hospital. Some complaints in this connection showed callousness on the part of factory management. He suggested formation of safety committees in the factories and institution of inquiries immediately after accidents to find out facts. A constant watchful eye, watching for unsafe acts particularly, and analysis of accidents would help in reducing the number of accidents considerably.

Shri S. V. Utamsingh, in summing up, stated that in spite of the clarifications offered, the administration of the Factories Act was causing harassment to the employers. Much could be done to see that the Inspectors were of service to the employers. Most of the rules were very cumbersome and could be reduced to the minimum. There should not be any distinction among the employers, as the problems faced by them were similar whatever industry they were running. He observed that if the Inspectors rendered real service to the employers, most of the trouble would not arise and added that no employer would object to the provision of adequate facilities regarding light, ventilation, sanitation and other requirements. What the employers resented was the arbitrary manner in which statutory words like "adequate", "fair", "reasonable", were being qualified, concretised or particularised. He made a final plea that the various forms that were required to be filled in by employers should be reduced both in number as well as contents.

Shri N. L. Gadkari offered additional clarifications on some of the points of controversial nature. Regarding overtime, he stated that permission for overtime was never delayed or refused if requests for such permission were received in writing within a

reasonable time. In cases of emergencies even telephonic intimation was sufficient for obtaining permission for overtime. Under no circumstances, however, exploitation of labour by the employers was allowed. Regarding the question whether watchmen, drivers, gardeners, etc. were covered by the definition of workers under the Factories Act, he viewed that watchmen, drivers, etc. were after all human beings and should be treated as such. It was the duty of employers to see that the service conditions of these employees were also improved along with other workers. Whatever might be the legal interpretation there should be human touch in dealing with the employees.

The inclusion of cash equivalent of concessions to compute normal wages of a worker do not in general cause any inconvenience as very few enlightened employers give any benefits or concessions which are required to be so computed.

Under the provisions of the Act it is not the Factory Manager but the Factory Inspector who has to ensure that secrets of processes seen by him in the factories are not revealed to others outside the factory. If any management desired that their processes be divulged to other factory owners, the Inspector of Factories would not be required for it.

Whatever might be the compelling conditions, no worker should be made to work more than forty eight hours a week. Any work over and above it constituted exploitation. Ordinary common facilities like sanitation, ventilation and other convenience should be there for all in all factories.

QUESTIONS AND ANSWERS

Shri N. L. Gadkari replied to some of the questions put by the participants. Before replying to the questions he stated that as the number of questions was large, he would answer only a selected few of them having general applications, and that the persons whose questions remained unanswered could write or later contact him, so that clarifications would be offered.

Question: Can amount of 25 nP be deducted from the wage bill of a worker by management for monthly contribution for a social club meant for workers and staff?

Answer: The deductions are permissible if permission of Government is obtained under 72 (E) of the Payment of Wages Act. Similarly deductions are permissible for any dues of the co-operative societies so long as such dues are collected from workers and handed over to the co-operative societies.

Question: If a worker sent out of the factory to fetch some materials returns late after factory hours, is he to be paid overtime? If yes, how should the permission of Factory Inspector be obtained?

Answer: As the work to be done by the worker under reference is not in the factory premises, his overtime would not be regulated by the Factories Act. If the factory managers experience any difficulty with Junior Inspectors in this connection, they should immediately bring it to the notice of the senior officers.

Question: If the third shift watchman in a factory does not turn up at the end of second shift, can the second shift watchman be permitted to work overtime?

Answer: As the watchmen are covered by the Factories Act, it will not be permissible to ask the second shift watchman to continue working for the third shift. But in exceptional cases where it is absolutely necessary, he can be asked to work. If this fact is reported immediately, say the next day, no action will be taken. Repetition of such overtime will not be allowed.

Question: Are the workmen engaged inside the factory in erecting the machinery or carrying out the repairs and not connected with the manufacturing process covered by the Factories Act? Are the workmen engaged during the construction phase of a factory amenable to the provisions of the Factories Act?

Answer: In a case which was decided by the Madhya Pradesh High Court the workmen were working on erection of boilers in a power station. The Court ruled that the workmen were workers as defined by the Factories Act and ordered that overtime wages should be paid to them. If, however, the manufacturing process has not started, then the place was not a factory and, therefore, it would not be covered under the Factories Act. Once the manufacturing process starts, it becomes a factory.

Question: As the prospects of Labour Welfare Officers are dependent upon the wish and will of the employer, is it not possible for the Factory Inspectorate to keep them in its employment and recover expenditure on their account from the employers ?

Answer: It must be realised that with the progressive employers, the Labour Welfare Officer need not be afraid to give his frank opinion. In fact, with the multiplicity of labour laws, rules and regulations, a Welfare Officer can be a guide to the employer who has other important work like carrying on business, running of a factory, etc. to look after. He would profit largely if he delegates his powers in respect of labour legislation to the Welfare Officer.

Shri Gadkari concluded by saying that if the factory owner could approach the Government before construction of a factory, they would be given all facilities by way of advice and guidance.

CONCLUDING REMARKS BY THE CHAIRMAN

Shri M. G. MANE

"I am very happy to be here and have listened with interest the speeches. I am glad to see that the non-officials have participated in the talk in a very friendly and co-operative manner. At least, I was very happy to know that in spite of some drawbacks in the Factories Act according to them or even certain lacunae in the implementation of it, they have not gone to the extent of saying that the Factories Act should be scrapped ! I am grateful to them for the valuable suggestions. I am mentioning this because when I had to study certain problems of application of the Factories Act in the industry, the industrialists had come to me in large number and the only thing they pleaded to me was that the Government should consider the question of withdrawal of the provisions of the application of the Factories Act to that particular industry; simultaneously, another morcha of workers had come to represent that the Factories Act has not been strictly made applicable to them. These kind of conflicting views are there. This is a social institution meant for the welfare of human beings. If the worker is kept content, the industry becomes prosperous. I would appeal to you all here to be more

generous, kind hearted and liberal to workers. Even now in spite of several years of Independence, there are a number of workers who are ignorant of their rights and responsibilities. They can still be exploited by people outside. It is, therefore, our bounden duty as educated people to see that all our workers are properly brought up in the industry, they get proper wages for the work they do and they get all the benefits that are given to them by our legislatures. I thank you once again for giving me this opportunity to preside over this meeting. You will be able to come here and attend all the sessions of the Study Course during the course of this week. As far as the State is concerned, I can say as the Labour Minister of this State, whatever deliberations are carried out here and the useful suggestions made by officials and non-officials will be minutely examined and we shall do our best to see that any anomalies pointed out in our labour legislation are done away with. We would try to see that the Act does not become oppressive either to the employees or the employers and we shall try to bring such kind of legislations which will give maximum benefit to the employers and employees and look after the welfare of all concerned.

Thank you very much once again."

EMPLOYEES' STATE INSURANCE ACT, 1948

Chairman

Shri D. R. Pradhan,

Chief Secretary to the Government of Maharashtra

* * * *

Summary of Discussion

Shri S. V. Utamsingh observed that before the introduction of the Employees' State Insurance Act, his company was satisfactorily looking after the medical needs of its workers, employees, staff and executives in its own hospitals and dispensaries, and that after the introduction of the Act, the factories and hospitals of his company were refused exemption from operation of the Act, though the standard of services rendered was good and available for inspection by authorities. In order to avoid duplication of efforts and resources, he continued, whenever the implementation of the Act was gradually extended to new areas and a factory of his organisation was to be covered by the Act, an offer was made to Government for integration of its medical services with those under the Employees' State Insurance Scheme. In the initial period, the response of the authorities was reasonable, the offers were accepted and the services rendered in the factories under those arrangements were considered to be satisfactory. Of late, however, the attitude was changing.

He then referred to the form of agreement between the Employees' State Insurance Authorities and the individual companies, and observed that the agreement form for offering medical facilities, which used to be a two-sided agreement in form as well as in substance in the initial period, had later tended to become unilateral agreement inspite of the fact that the facilities offered by a company were considered to be good. He wanted to know whether the Employees' State Insurance Authorities had given up the bilateral approach in concluding agreements. He

stated that workers in one of the factories of the A.C.C. complained to the management and to the Government that they were not willing to be covered by the Employees' State Insurance Scheme as the Company was providing free medical and other facilities to them. The cost incurred by the company for the medical services offered to its employees amounted to Rs. 74.56 nP per worker per year, whereas the expenditure incurred by Government in that connection was Rs. 19.00 per worker per year. Integration of services were allowed in some factories and refused in others. It was very difficult to convince workers as to why they were getting inferior services under the Employees' State Insurance Scheme. It was experienced that dispensaries opened under the scheme were not functioning properly; sometimes doctor was not available; if doctor was present, compounder was away and when both of them were in a dispensary, medicines were not available.

Shri Utamsingh mentioned the following points on which clarifications were needed:—

(i) Why should there be a change in the form of an agreement and why has it been reduced to a one-sided affair?

(ii) Why does not Government use facilities that already exist and insist upon having its own hospitals and dispensaries?

(iii) In some cases, part of the existing facilities provided by the employers in factories are utilised, e.g. Government would take only hospitals and not dispensaries and in other cases only dispensaries and not hospitals. Similarly, the Act is applied in compartments on technical grounds, e.g. a cement factory is covered by the Act but a quarry attached to it is not, though application of the Act to the latter was more important.

(iv) There is delay in receipt of capitation fees from the authorities which was partly due to duplication. There were instances where fees were not received for a period of five years, though it should have been received within a year.

(v) The specialists appointed by the Employees' State Insurance Corporation to whom cases were transferred by Insurance Medical Practitioners give with least resistance certificates to workers to the effect that they should be given light work in the factory. As a result, the employers were put to inconvenience. The specialists are also prone to prescribe costly medicines.

(vi) As it is difficult to decipher the certificates issued in handwriting by doctors, the Corporation should employ additional clerks to write certificates in good handwriting.

(vii) Instead of utilising the hospitals of factories, Government is constructing its own hospitals under the scheme in such a way and at such places that even transport for conveying patients to hospitals is not available. Many a time, the employer has to arrange for conveyance of his worker-patients.

(viii) Beds should be reserved for insured workers in general hospitals. In several hospitals, a worker does not get good treatment though he pays contribution under the Employees' State Insurance Scheme.

(ix) The working of the Act has contributed to the increase in absenteeism in the factories. The workers take maximum advantage of the leave facilities.

(x) The employers have to pay contribution under the Employees' State Insurance Scheme in the first instance to the Corporation. Recovery of a worker's share is allowed to be made from his pay. If, however, by mistake less amount was recovered from the pay of a worker, the employer is not allowed to recover the balance amount at a later date.

(xi) Regulation 97 has entailed considerable clerical work because of the different approaches to provision of sick leave on full pay and half-pay.

(xii) Affixing contribution stamps on various registers created a lot of clerical work.

(xiii) Difficulties were experienced in obtaining franking machines and having them serviced in factories.

(xiv) There was also a lot of clerical work involved in working out the daily average wages of employees.

(xv) The definition of "a worker" is unnecessarily widened so as to include even a casual worker employed for a day.

(xvi) The question of inclusion and exclusion of employees on the border line of remuneration of Rs. 400/- needs attention.

(xvii) One of the features of the Act which falls short of its basic character is that when a worker is unable to contribute to the scheme for the reason of his being on authorized leave without pay, the employer has to pay on his behalf.

Shri L. C. Joshi observed that the administration of the medical benefits should not have been entrusted to the State Government which contributed very little to the cost whereas the Employees' State Insurance Corporation which paid the major share had no say in the matter. He discussed the matters with officials of the Central Government and felt that they also agreed with his view. He remarked that though the State Government could be associated with the administration of medical benefits, it should not be allowed to operate the whole scheme. The State Government, he continued, was also responsible for the health of the general public. It was not possible for it to fulfil the dual role; nor could it give sufficient service to the industrial workers and cause inconvenience to the general public. He submitted that it would be better if there was only one agency for the administration of the medical benefits.

As regards to the utilisation of funds, he observed that only recently the Mahatma Gandhi Memorial Hospital, which was the only hospital for industrial workers, was started with the funds accumulated from 1955. The industrialisation in the country was making rapid progress and as such the provision of one hospital for industrial workers in 1962 would not be enough. The Corporation as well as the State Government had a number of schemes but it was not known when additional hospitals could

be started. After all, he observed, the benefits of hospitalisation were much more important to the industrial workers than getting ordinary medical benefits from the panel doctors. He suggested that the Corporation as well as the State Government should take steps to start more hospitals and that if there were only legal difficulties coming in the way, they should be overcome.

Regarding the question of certification, he observed that though he Employees' State Insurance Act conferred benefits of five kinds, viz. medical benefits, sickness benefit, temporary disability benefit, permanent disability benefit and maternity benefit, one more benefit of issuing certificates was conferred by the Employees' State Insurance Scheme as it operated in Greater Bombay. The certificates had given certain advantages to workers. If there was a danger of retrenchment in a factory, a worker could go to a panel doctor and get a certificate to the effect that he was sick, so that it was no longer possible for his employer to retrench him. Some of the workers who were afraid to go to factory in the event of a strike could go to a panel doctor and secure a medical certificate. The employers were not able to do anything when certificates were issued to the workers by panel doctors or by any doctor for that matter. This matter was brought to the notice of the Insurance Authorities on a number of occasions. He remarked that it appeared as if doctors were making money by issuing certificates rather than by giving treatment, and suggested that it required tightening up the administration on the part of the State Government as well as the Insurance Authorities, as this kind of practice defeated the very purpose of the Act.

He also referred to the sick leave provision for workers in factories before introduction of the Act and stated that according to Section 97 of the Act, if sick leave provision was with half pay, it had to be discontinued and if it was with full pay, it was to be allowed. The employer could, however, deduct from the leave salary of the employee the amount of benefit he may receive from the Corporation. This provision of sick leave with full pay caused absenteeism in factories on a large scale.

He observed that in cases of occupational diseases like manganese poisoning, the provisions of the Act were not enough to

plug the loopholes in the scheme and that certain corrective steps were necessary in that connection. He cited an example of a manganese processing factory in Mysore State where a number of workers were infected with manganese poisoning. In order to get retrenchment compensation, which was allowed only to infected workers, some of the workers not affected by the disease induced doctors to issue certificates to the effect that they should be given light work and later maintained that they were suffering from manganese poisoning and produced certificates to that effect from doctors.

He then referred to the classes of workers eligible for getting benefits under the Employees' State Insurance Scheme and stated that in some cases, a worker with Rs. 75/- as a basic wage might get in a month Rs. 100/- as dearness allowance and about Rs. 300/- by way of production bonus with the result that in some months he might get more than Rs. 400 and in other less than Rs. 400/-. Under the provisions of the State Insurance Scheme the moment a worker went above a salary level of Rs. 400/-, he was not entitled to the benefits under the scheme. He viewed that this restriction was not fair to the workers and suggested that certain steps should be taken by the State Insurance Authority so that workers were not deprived of the benefits of the scheme in such cases.

He raised a point whether the sickness benefit received by a worker could be deducted from the sick leave wages given to him, and sought clarification whether it was necessary that sickness benefits received by a worker from the Corporation should be deducted if he was entitled to an annual leave for one month.

Regarding the contributions which were paid to the Employees' State Insurance Corporation on a weekly basis, he observed that a lot of clerical work could be avoided if they were paid on monthly basis, as payment of wages to workers in this country were made on monthly basis.

He also raised a point of authorised leave and observed that though there was no definition of the 'authorised leave' in the Act, Section 41 of the Act provided that if a worker was on the authorised leave, irrespective of whether he was paid or not for

the leave period, the employer had to pay contribution both for himself and the employee.

He observed that even though the clerical employees were entitled to the benefits of the State Insurance Scheme, there was a general feeling that since clerical workers were not likely to meet with any accident or injury, it was not worthwhile for them to contribute to the scheme and, therefore, the benefits of the scheme should not be extended to them. The employers also felt that a clerical worker could as well go to the panel doctor or his family doctor and contribute himself to some extent towards the cost of medical expenses.

Referring to Section 66 of the Act, he said that under the Section the Corporation is entitled to recover from an employer the actuarial present value of the periodical payments which it is liable to make under the Act to an insured person for employment injuries sustained by such person due to negligence of the employer and to observe the safety rules under the Factories Act. It was, therefore, incumbent on the factory management to install safety devices and to take all reasonable care and caution to prevent accidents. He concluded by saying that the State Insurance Scheme should work to the advantage of all concerned without any delay or hardships.

Shri N. Varma replied to various points raised by the previous speakers and stated that the Employees' State Insurance Scheme was not fifteen years old as mentioned by one of the speakers, and that though the Employees' State Insurance Act was passed in 1948, the scheme was first put into operation in 1952. A period of ten years was rather too short for gaining sufficient experience in working of the scheme. The experience gained so far was being utilised for overcoming the drawbacks and difficulties experienced. He viewed that inspite of the difficulties and problems, the scheme on the whole was working well. He welcomed the various suggestions and observations made by earlier speakers and stated that an attempt would be made to give effect to their suggestions. He informed that during the last five years in particular the Employees' State Insurance Corporation had been endeavouring to enlarge the scope of benefits conferred by the scheme to the employees. The Corporation had

decided to construct its own hospitals to cater to the needs of insured persons in almost all the states.

In order to widen the activities and enlarge services to workers of Bombay, Shri Varma stated, the Employees' State Insurance Corporation had already opened the Mahatma Gandhi Memorial Hospital at Parel with maximum capacity of 600 beds. The proposal to construct another hospital for as many beds at Mulund was under consideration and a 250-beded hospital at Worli was nearing completion. It was hoped that when these hospitals started working in full, the needs of industrial workers in Bombay would almost be fully met except for the T.B. hospital for which land had yet to be found. He admitted that with the inauguration of the State Insurance Scheme certain beds were reserved for the industrial workers in all general hospitals in big cities. As there was already shortage of hospitals in the country, it was felt that the employees covered by the State Insurance Scheme were encroaching upon the legitimate needs of general public and that the Employees' State Insurance Corporation should have its own hospitals. With that object in view, Shri Varma stated, the Employees' State Insurance Corporation was constructing a chain of hospitals in various important cities like Bombay, Madras, Kanpur, Bangalore, Secunderabad and Calcutta where there was concentration of industrial workers covered by the scheme. At other places also the problem of setting up separate hospital facilities for industrial workers covered by the Employees' State Insurance Scheme was being tackled satisfactorily and adequately. He observed that as things now stood Bombay had the largest number of insured persons under the Employees' State Insurance Corporation and that Calcutta came next in order. He stated that initially there seemed to be much scepticism in the minds of the employers and their organisations about the satisfactory working of the scheme. Some of them were sure that the scheme would ultimately fail. That these predictions, he said, proved to be wrong, was obvious from the fact that this scheme had been running now for the last ten years and had been extended to almost all the States. Applications had been received from a number of employers for recognition of their dispensaries under the scheme. He said that the scheme would work well provided proper understanding and co-operation was

forthcoming from the parties concerned. In the initial period, the Employees' State Insurance Scheme covered only the employees but later on the policy of the Corporation was changed to cover families of employees also for provision of medical benefit. The facilities were also sought to be further improved. Regarding issue of false certificates by doctors, Shri Varma invited attention to the other side of the picture and mentioned that the workers had represented to the Employees' State Insurance Corporation that the managements did not take into account any application for availing of any leave except on the basis of doctor's certificates and, therefore, they had to obtain certificates from doctors.

Shri Varma then offered clarifications on the following points raised by the earlier speakers.

(i) Non-standardisation of the form of agreement for integration of medical facilities

This was a subject within the jurisdiction of the State Government. The State Governments who were entrusted with the entire responsibility for giving medical benefits were entering into agreements with the employers. The Employees' State Insurance Corporation could only prescribe a standard form of agreement but it was left to the State Governments to modify it to suit their needs; that is why the form of agreement was not perhaps uniform in all the States.

(ii) *Integration of medical facilities of the employers with the medical set-up of the Employees' State Insurance Corporation*

Though the Employees' State Insurance Corporation had tried to induce the employers in Calcutta and Bombay to integrate their medical facilities with its own medical set-up, all employers had preferred to wait and watch the working of the State Insurance Scheme. So far, about twenty-five employers outside these cities had integrated their medical facilities with those of the Employees' State Insurance Corporation.

(iii) *Prescribing light work*

The Corporation had taken a stand that the employers were not legally obliged to provide light work and had therefore

issued instructions to doctors that they should not prescribe light work.

(iv) *Coverage of establishments*

It was the objective of the Employees' State Insurance Scheme to bring in as many employees ultimately as possible under it. The E.S.I. Act already contained provision whereby the Scheme could be extended to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise, by issue of a notification in the official Gazette giving six months' notice in advance.

(v) *Availability of doctors and hospitals*

The problem of availability of doctors and hospitals was not so acute in Bombay as compared to other places. The shortage of doctors and hospitals was an all-India question and had to be solved on that level. Some inconvenience regarding hospitalisation had to be put up with because Government hospitals and dispensaries were naturally meant to cater to the needs of general public and not those of the industrial workers in particular. The Employees' State Insurance Corporation had a programme of constructing hospitals in all centres where the scheme was running, because the general hospitals were meant for general public and the State Insurance Scheme had no right to encroach upon those facilities. Attempts were being made to construct separate hospitals at such centres for insured workers and to provide them with better facilities and amenities.

(vi) *Absenteeism*

Some of the employers represented to the Employees' State Insurance Corporation that the indiscriminate issue of certificates by Insurance Medical Practitioners encouraged absenteeism in factories. There may be some element of truth in the complaint but the figures supplied by the Ministry of Labour proved it otherwise. A check on lax certification was being kept and consequently quite a large number of references were being made to medical referees for second opinion.

(vii) *Employer's right to recover short-falls from employees*

Regarding the point about restrictions placed under Section 40 of the Employees' State Insurance Act on the right of employers to recover short-falls in contribution from the wages of employees, it was mentioned that there was the other side of the picture. Some of the small employers were trying to find ways and means to avoid making payments to the Corporation not only of their own contributions but also of the contributions recovered by them from their employees. It was noticed that a factory in Bombay had not been covered and, therefore, had not made payment of contributions under the Employees' State Insurance Scheme for a period of four years. Under the provisions of the Act the employer was asked to pay the employer's as also the employees' contribution for all the four years. Had there been no restriction, the Employees' contribution for such a long period would also have been recovered by the employer from the salaries of the employees who would have, as a result, suffered hardships. The provisions about recovery under the Act might have created a few difficulties for employers but on the other hand it had certainly protected the interests of workers.

(viii) *Different approaches to sick leave under Regulation 97 of the Employees' State Insurance Act*

If sick leave was allowed to a worker on half pay or full pay, the recovery under the Employees' State Insurance Scheme was easier. If, however, privilege leave with full pay (other than for sickness, maternity, temporary disablement) was allowed, it could not be recovered because the employers had entered into a sort of agreement with the employees, which could not be scrapped. The Act clearly laid down that if the employees were given privilege leave or leave admissible under Factories Act, on full pay, then deduction was not allowed, unless the leave was availed of on grounds of sickness. This problem was discussed and suggestions were made at the meetings of the Standing Committee, Regional Boards and Local Committees of the Corporation on which all interested parties were represented.

(ix) *Affixing contribution stamps*

Though existing procedure caused some inconvenience in affixing contribution stamps, there was no other alternative in

the prevailing circumstances. The Employees' State Insurance Act was being amended so as to have only one wage group in one contribution period. All the stamps would then be uniform and the difficulties experienced would then be eliminated.

(x) *Difficulty in obtaining franking machines and procedure for loading and unloading*

As there was a ban on import of franking machines, the Employees' State Insurance Corporation was doing its best to help the employers with the existing machines. In Bombay, about one hundred and twenty employers were using franking machines. All such employers are at present approaching Local Office Managers of their area for loading of franking machines which is done expeditiously.

(xi) *Clerical work arising from the computation of daily average wage for each wage period*

In order to avoid clerical work arising from the computation of average daily wage for each wage period, the existing provisions of the Act were being amended whereby there would be only one wage group for entire contribution period. Accordingly there would be only one rate which would be related to the benefit period. Rate of contributions at the beginning of the contribution period would be the determining factor.

(xii) *Definition of 'employee'*

The existing definition of 'employee' was linked with a maximum wage limit of Rs. 400/- per month. With the recent amendment proposed to the Act, the definition of 'employee' would be widened and the maximum wage limit would be raised to Rs. 500/- per month. It was also proposed to provide that if an employee was covered by the Employees' State Insurance Scheme at the beginning of the contribution period he would remain so during the whole of the contribution period irrespective of any increase in his salary.

(xiii) *Authorised leave*

The provision in the Act to the effect that when an employee was on authorised leave with or without pay, the employer

should pay contribution under the Employees State Insurance Scheme both for himself and for the Employee was being amended, though it had its own advantages in the initial period of the Scheme.

Dr. S. K. Das observed that medical science was fast progressing and, therefore, what was medically adequate ten years back was not adequate now. He stated that at one time an ordinary dispensary was sufficient but with the expansion in the modes of treatment, a dispensary was not enough. The cost of medical treatment was also going up. Attempts were being made to achieve further improvements in the medical facilities available in the country. The medical services, moreover, were not uniform in all parts of the country. The difficulties experienced by a factory in Rajasthan, for example, might be different from those experienced by a factory in Bombay. Dr. Das stated that the Employees' State Insurance Scheme in Bombay had comprehensive medical care as its aim and when the care was the goal, the system of medicine used was not important. Regarding standardisation of agreement form, he observed that in Bombay a tripartite agreement was entered into and was acceptable to all the three parties concerned, viz. Government, Corporation and the Company.

The present Insurance Scheme, Dr. Das continued, was such that a voluminous clerical work was required to be done by doctors in its operation. When the forms to be filled were large and cumbersome, then naturally the efficiency of doctors in discharge of medical duties was affected. It was also not possible to employ additional clerical hands to do clerical work, as the funds and resources available were limited.

The Government of Maharashtra had appointed a Committee to go into the question of the conditions of the working class in Bombay. It is found that the workers covered by the Employees' State Insurance Scheme enjoyed better medical facilities than previously. More and more workers were taking advantage of full benefits extended by the scheme. Families of workers were also taking advantage of the medical facilities. Though the Scheme had some drawbacks and defects which were carefully noted and overcome, its working on the whole was satisfactory.

With the opening of hospitals specially constructed for them, the individual workers would be well looked after and receive all facilities.

Shri K. L. Gothi replied to some of the questions raised by the speakers and the participants. His replies, clarifications and explanations were as given below:—

(i) Regarding the length of Accident Form and the number of its copies to be filled in, it was explained that whenever an accident took place, it must be reported immediately. The Accident Form stipulated a number of particulars to be filled in so as to clarify how and why the accident took place. For improving industrial safety it is necessary to obtain full information about the accident.

(ii) Maternity Benefits were extended fully to all women workers. More and more women workers were taking full advantage of the Employees' State Insurance Scheme.

(iii) In addition to Tuberculosis, Leprosy, Mental and Malignant diseases like Cancer and Fracture of the Lower Extremity were also being included for purposes of Extended Sickness Benefit. Special hospitals were being constructed under the Employees' State Insurance Scheme and the patients were given individual and immediate attention.

(iv) For those workers who lost their limbs, special arrangements were made at Armed Forces Artificial Limb Centre, Poona. Workers from various parts of the country were being sent there. Artificial limbs were provided at the Corporation's expense. The patients were also paid travelling expenses for journey between their places of residence and Poona. In cases of necessity an attendant was also permitted to travel with the patient. The entire cost of travelling and stay at Poona for the whole duration for fixing the limb and training for its use was met by the Employees' State Insurance Corporation. A spare limb known as dress limb was also provided. If any repair was necessary, the artificial limb was sent for repairs and received back at the Corporation's expense.

(v) In cases of death of an Insured person, it was proposed to amend the Employees' State Insurance Act to pay a lump sum grant for funeral expenses.

(vi) The activities of the Corporation were expanding every day. The situation was under careful study all the while with a view to serving the workers to the fullest capacity.

(vii) Regarding the issuing of certificates, it was brought to the notice of the Corporation that facilities were being misused by some of the workers. The co-operation of Panel Doctors was, however, necessary in this matter.

(viii) The difficulties and delays in securing franking machines were due to high demand for them. There were limited number of machines available with the importing firms. Owing to stringent foreign exchange situation, it was not possible to import additional franking machines.

(ix) Complaints were often made about the rigidity of rules enforced for the installation of safety devices at the factory. It was in the interest of employers as well as workers that the rules regarding safety measures were strictly observed because thereby not only the lives and limbs of workers were saved but the employers also were fulfilling their responsibility towards workers. Some accidents were really due to the negligence of the employers in not providing sufficient safety devices. It is felt that permission for starting a factory should not be given unless the requirements of safety devices were completed.

Shri S. H. Fernandez clarified that the foreign exchange was recently released for the import of equipment for the Worli Hospital, which might, therefore, start functioning sometime next year. Regarding hospital at Mulund, he informed that the land was acquired and the plans were being prepared. The Mahatma Gandhi Memorial Hospital at Parel would shortly be in a position to work to its maximum capacity of 600 beds. Regarding a point about dual control in the administration of the medical benefits and a suggestion that as the Employees' State Insurance Corporation was paying the lion's share, the control of benefits should be handed over to the Corporation, he observed that at

present the Corporation could take over the responsibility for administration of the benefits only with the approval of the State Government.

QUESTIONS AND ANSWERS

At the end of the discussion, Shri K. L. Gothi replied as follows to some of the questions raised by the participants.

Question: The Accident Report Form laid down by the Employees' State Insurance Corporation has a column "whether the injured person violated any safety regulations". In case a workman has done so and is injured or dies on that account, is he or are his dependants entitled to Disablement or Dependants' Benefits? If 'Yes', why that column is introduced in the form, and if 'No', is it fair under social legislation?

Answer: The Insurance Scheme is intended to give maximum benefit to all workers. Most of the workers in our country are, however, uneducated. They are not able to understand the law and the Act. In such cases, benefit of doubt is given to workers involved in the accidents. In case of death due to Employment Injury, all claims for Dependants' Benefit are paid, although there may be mistakes on the part of the insured persons.

Question: Why should the Employees' State Insurance Corporation not allow some benefit by way of refund of contribution or any other method to those who have not availed themselves of the benefits under the Employees' State Insurance Act?

Answer: It is not possible in the case of the Employees' State Insurance Scheme to arrange for any "no claim" bonus, as in case of insurance of motor cars, etc. This is a Social Insurance Scheme and such provision is not made in Social Security Schemes.

Question: Maternity Benefits are paid even to widows under the Act during and after pregnancy. Should not the Act be amended to provide these benefits only in legitimate cases?

Answer: It is not possible for the Corporation to go into the question whether the maternity was legitimate or illegitimate.

Shri Gothi concluded by saying that in a short time all factories were expected to be brought within the ambit of the Employees' State Insurance Scheme. All the employers realised that it was in their own interest that their factories should be covered by the Scheme. The workers also got immense benefits by participation in the Scheme.

Dr. S. K. Das clarified some of the points raised by the participants as under:

Medical facilities

In the present times, the medical facilities have improved by leaps and bounds. When a worker wants better and immediate treatment, he is legitimately entitled to it. It is not right to complain that treatment is costly one.

Leave facilities

It was complained that leave was availed of by workers by wrongful means. When a worker is entitled to a particular leave, he cannot be denied. If a doctor refuses to grant him a certificate for availing the leave to which he was entitled, he would go to another doctor who is willing to oblige him. It is necessary for a doctor to retain his clients.

Absenteeism

There was also a mention that absenteeism has increased. The experience indicated that a worker avails of the facilities due to him in full and that cannot be construed as wrongful advantage of the concessions due to him. It is not also correct to say that malingering has increased, though it is not also possible to say whether a worker is a malinger or not.

Check upon panel doctors

The system of checking of the working of the panel doctors should be intensified. For this purpose, the number of Inspectors should be increased.

Dr. Das concluded by saying that whatever might be the criticisms, the facilities under the existing scheme did immense benefits to the working class.

CONCLUDING REMARKS BY THE CHAIRMAN

Shri D. R. PRADHAN

"Listening to this evening's speeches, I felt that we have had a detailed audit of the Employees' State Insurance Scheme and I believe there is very little left for me to say on the subject. I shall, therefore, confine myself to certain general points.

When discussing the Act or the Scheme which is embodied in the Act, it is very necessary for all of us to remember certain things. Unless we do that our criticism or our expectations are likely to be wide off the mark. The first thing that we have to remember is that it is the first scheme of its kind introduced in this country. We have had no previous experience of run ning such a scheme. So, in a way, all of us who are concerned with the scheme are beginners and as beginners we are likely to commit mistakes. Secondly, we must remember that this scheme is being implemented not in a vacuum but in the general conditions prevailing in this country. There is lack of doctors, lack of hospitals, lack of money, lack of medicines, lack of foreign exchange and all that. A point was made that our hospitals are not conveniently located. Well, land is not always available at the place where you want. That is the experience not only of those who are in charge of the administration but also of the industrialists who have to set up their factories.

Third thing that we have to remember is this. Workers and employers are not the only people with whom we have to deal. There is the general mass of people who have to be reckoned with when you introduce a scheme of this kind and want to implement it. I say this because we live in an atmosphere where welfare schemes are competing with each other. There have been people who have been challenging the priority which has been given to this scheme. Questions are always asked whether a scheme of this kind should have priority or whether some other scheme should receive greater priority. This is very important to remember. Because very often claims are made on behalf of this scheme which it is not possible for any State Government or the Central Government to consider or fulfil.

Another thing we have to remember is that a scheme of this kind will never be successful unless all the parties concerned co-operate in making it a success. In a scheme like this, there are several partners. There are the employers, the workers, the doctors, the State Government, the Central Government, and above all, the statutory corporation created for this purpose. Unless all these different partners work in close harmony in a very understanding way, I think the scheme will not be that success which we want it to be. All of us, therefore, should avoid taking an attitude of fault finding. Any such attitude will not be in the best interests of the scheme. As I was a member of this Corporation for several years during its formative period (possibly, it has not got over its formative period still), I can tell you that there were problems to solve and there was the will to solve them but there were not the means. Take a problem like Service System versus the Panel System. It has been mentioned here that why should we have the panel system. To my mind, this is a very superficial view. We cannot afford the services of paid doctors. Even if we can, where are we going to get all the doctors we need from? The approach had, therefore, to be pragmatic and where service system promised greater results, service system was introduced, and where panel service was available it was made use of. We cannot decide questions like this on any theoretical considerations. We have to see what would be best at a given time, at a given place, and it is only if we approach the problem in that way that we may get quicker and better results.

One thing I would like to say in conclusion. On this point I am addressing more the State Government employees, the Central Government employees and the Corporation employees. Nothing would be more dangerous to this scheme than an attitude of complacency. We have to bear in mind that the scheme is in a developing stage and many adjustments and improvements will be necessary. Questions were asked and replies were given, but there are certain points on which there should be no complacency and I will mention them in brief. Take a point like the voluminous clerical work imposed on the insurance medical practitioners. Here is a real problem. We cannot lightly dispose it of. To use the time of a technical person for non-techni-

cal work is a national waste and it is our duty to see that we reduce this waste as much as possible. It is not for me to suggest a solution. It, however, strikes me why should we not give them part-time clerical help. I suppose that will diminish their earnings to a certain extent and so on, but in the larger interests of the patients and the country something of that kind will have to be done. Then a thing like inordinate delays in receipt of capitation fees from the authorities. I do not know whether this is a problem or not, and, if it exists, whether it exists on a large scale or not. I shall assume that it exists and say that it should be our duty to reduce such delays. It would be no answer to say that we have our difficulties and that we are doing our best under the circumstances. That is an attitude which we ought not to take. Then, there is the question of absenteeism due to malingering. This is certainly a problem which requires close attention. It was said that all workers seem to take full 56 days' leave allowed. Well, I would say that it may be a good thing or it may be a bad thing. If the leave is necessary, why should it not be taken. Workers sometimes work even when they are ill. Merely because they enjoy all the benefits that are given under the scheme, we cannot condemn them. I would ask the same question to the higher executive also. Don't they fully enjoy the privileges they have? There is nothing wrong in enjoying the privileges one has. These things have to be looked at in a dispassionate manner. If all this absenteeism is justified, we cannot take any exception. If, on the other hand, this absenteeism is a mere malingering, the society as a whole should face it. Here is a problem which I believe requires a very close and scientific study. We should not approach it with preconceived notions. We should analyse it and come to dispassionate conclusions and having come to such conclusions, we should have the courage to apply appropriate remedies.

I am sorry I did not intend to take so much of your time, but I thought I should say a few things. You will agree with me that this evening's discussion has been very useful. It has brought to light even points of detail and about which you people in charge of labour should be aware. I congratulate the Institute on arranging a Seminar of this kind."

INDUSTRIAL DISPUTES ACT, 1947
BOMBAY INDUSTRIAL RELATIONS ACT, 1946
INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946
CODE OF DISCIPLINE

Chairman

Shri D. S. Bakhle,

Deputy Chairman,
Mill Owners' Association, Bombay.

* * * *

Summary of Discussion

Shri B. Rajaram confined his remarks to the Bombay Industrial Relations Act, 1946, and observed that though the Act gave sufficient powers to a factory management and the provisions of the standing orders of any factory were quite comprehensive, it was found difficult to put them into practical application. To illustrate, he referred to a situation arising out of the participation of workers in an illegal strike. In such a case, when it was established that the strike was illegal and a declaration to that effect was obtained from a competent authority and when it was also proved that a body of workers did participate in the strike, it should be open to the factory management to take disciplinary action. It was, however, not so simple. If an action took a form of dismissal of a worker and was subsequently challenged in the court of law, it was very difficult to prove to the satisfaction of the court that the worker concerned actually took part in the strike. With due regard for social justice and natural justice and conceding that the factory management would not like to be unfair to workers, a manager hesitated to take action even though he was convinced that the workers were in fact guilty of taking part or participating in an illegal strike. In such circumstances, he remarked, the maintenance of discipline became extremely difficult.

He referred to Schedule II appended to the Bombay Industrial Relations Act and observed that it was vitally concerned

with industrial peace because it covered such important issues like reduction or increase in the strength of semi-permanent employees, rationalisation, withdrawal of recognition to unions of employees, hours of work, etc. The ball was set rolling by the trade unions in most of the cases covered by Schedule II. In such situations, it was not possible to make any progress even if in some of the cases the progress was quickly called for or was imperative, and it became difficult for the factory management, in spite of its good wishes, to put through any proposal. Conciliation was sometimes insisted upon by the unions to delay matters. Such kind of attitude was not conducive to good industrial relations and the establishment of mutual faith among the employers and the employees. In this connection he referred to the American situation where bargaining was taking place in good faith created by the legal provisions. He emphasised that the bargaining ought to take place with mutual faith among the employers and the employees and remarked that with too much of legalistic bias and emphasis in operation of industrial relations in this country, the basic requirement of cordial industrial agreements, namely mutual good faith and trust in the *bona fides* of each other were lacking.

He then referred to the provisions of the Act regarding arbitration and observed that though employees' union was allowed to refer an industrial dispute to arbitration if it was not satisfied with the award of conciliation machinery, this concession was refused to the employer. He felt that there would have been possibility of settling an industrial dispute after going through the conciliation proceedings but for this privilege of the unions. They might demand the reference of an industrial dispute after conciliation proceeding to an arbitrator or adopt some such course of action which was intended to be avoided by all.

Referring to the Industrial Employment (Standing Orders) Act, he observed that there were a few deficiencies in the model standing orders. One particular deficiency which was often experienced was that action was not possible unless certain breach of standing order was committed so frequently as to call it habitual. It was not possible to take action where negligence was involved, if the negligence on the part of a worker was not habitual. Quoting an example from the textile industry, he men-

tioned that some of the textile workers deliberately damaged hundreds of yards of cloth through gross negligence and that it was not possible to take any action against them unless it was proved that the workers concerned were guilty of similar misconduct in the past and were warned many times against such misconduct.

Shri M. S. Warty made the following observations on the various Acts.

The Bombay Industrial Relations Act, 1946

The Bombay Industrial Relations Act contained all conceivable methods of resolving industrial strife. It had a place for compulsory recognition of unions, for certification of standing orders, for conciliation by conciliator or Board, for court of enquiry, for compulsory and voluntary arbitration, for wage boards, and for labour courts. In spite of these provisions, he observed, the textile industry of Bombay had to fall back on the old and forgotten remedy of mediation for settling a dispute regarding bonus.

The Act provided for a recognised bargaining agent on behalf of workers. This recognition was given to a representative union having a membership of not less than fifteen per cent of the total number of employees employed in any industry in any local area. Thus, though the representative union might have a membership of just fifteen per cent of total employees, it was entitled to speak on behalf of each and every employee irrespective of whether he was a member of the union or not. It could, moreover, make an agreement with the management on behalf of a category of employees, none of whom might be its member. To take an extreme example a representative union might force revision of pay-scales of all clerks in an industrial organisation, even if not a single clerk was its member. The union was not bound to consult the clerks either; nor, if it consulted them, should it follow their wishes.

The powers of the employees' union included the one of referring a dispute to the Industrial Court for arbitration. This power, under the Industrial Disputes Act, was exercised by the

Government only. By using this power, an union could drag the factory manager to the Industrial Court, but conversely the manager was not in a position to refer a dispute to the Industrial Court. If he wanted a judicial settlement and not a decision through the trial of strength with the workers, he had to coax the union to refer the dispute to the Industrial Court. Thus, a factory manager who had to satisfy three parties was placed in a difficult situation. He should first persuade the workers; secondly, he had to satisfy the union; and thirdly he had to explain the employer why he agreed to the terms of the union.

There were certain provisions in the Act which undermined discipline in factories. For example, if workers went on strike or if they instigated other workers to go on strike, a factory manager was unable to punish them unless the strike was declared illegal by the Labour Court. The instigators would also not be punished if the strike did not take place.

A factory manager was sometimes placed in an absurd situation arising out of the provisions of the Act. In course of his duties a factory manager might discuss certain questions with the trade union officials. In case no settlement was reached and the matter was referred to the wage board, it was found that the same union official, who was discussing a dispute before referring the matter to the wage board, would sit as member on the board.

Industrial Disputes Act, 1947

The Industrial Disputes Act laid down a detailed procedure for establishment of a works committee. The procedure was so complex that no employer would dare set up a works committee unless compelled to do so. The procedure stipulated that representation should be given to various categories, groups and classes of workmen and to various sections, establishments and departments. The committee members were to be elected by trade union members and non-trade union workers separately and the seats allocated (for trade union workers and non-trade union workers) should bear the same proportion as the trade union members in the establishment bear to the non-members. Where there were two or more trade unions and again non-union workers, the seats on the committee had to be apportioned among

them by categories, groups, and classes and by sections, establishments and departments. For the purpose of organising elections to the works committee, the workers had to be divided into electoral constituencies, the qualifications of each candidate for elections had to be checked, the eligibility of workmen to vote had to be ascertained, nomination papers had to be received and scrutinised, the date of election had to be fixed. The whole procedure was causing annoyance.

For a long time collective bargaining as a method of mitigating industrial friction was not recognised by the Industrial Disputes Act. It was recognised later on in a limited sense. Agreements reached in negotiations could be registered but were binding on members of the union. They were not binding on members of the other union or non-members. If, for example, out of forty workers in an occupation twenty were members of a trade union and the union signed an agreement with the employer, the agreement would be binding only on the twenty workers who were members of the union. The other twenty workers might have been doing exactly the same work, but they were not bound by it. If, as a result of an agreement, there was an increase in wages, they naturally came forward and claimed it; if there was an increase in work, they quickly disowned it.

The Section 19[1] of the Act dealt with the period of operations of settlement and awards. The normal life of a settlement

---

1. Section 19 of the Industrial Disputes Act, 1947, is reproduced below.

19(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for period of six months, from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for the period of one year from the date on which the award becomes enforceable under section 17A: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit; provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year, at a time as it thinks fit so, however, that the

was six months and that of an award one year. In other words there was an invitation to the workmen to reagitate every six months or a year. The position regarding operation of an award was that any union could terminate it by giving a notice of two months after the expiry of the statutory period. The minority union was, thus, in a position to terminate award notwithstanding the wishes of the majority of the workmen. Shri Warty characterised this position as untenable and observed that the provisions encouraged dissensions among workmen and breach of industrial peace. The Section 33(1)[2] of the Act prohibited disciplinary action against workmen except under certain circumstan-

---

total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal if the award as that of a Tribunal or a National Tribunal for decision, whether the period of operation should not by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be on such reference shall be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

2. Section 33(1) of the Industrial Disputes Act, 1947 is reproduced below.

33(1) During the pendency of any conciliation proceeding before a conciliation office or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

ces. The trade unions kept the pot of industrial disputes continuously boiling in order to invoke the protection afforded by this provision. Even before one dispute was settled, the trade unions would start another dispute because it involved security of jobs. Shri Warty remarked that if it was the intention of the Act to prevent disputes, it was not the way to go about it.

Industrial Employment (Standing Orders) Act, 1946

It was anomalous that the technical personnel should be subjected to the standing orders prescribed by the Act. Some of the technical personnel might be getting higher pay and might even enjoy higher status than that of a manager who was authorised to take disciplinary action against them. It was also difficult to understand why the technical staff was grouped with the manual workers and not with the clerical and supervisory staff for whom there were separate standing orders.

Shri Warty traced in brief the history of how the model standing orders came into picture. For a period of about ten years after passing of the Act, only two-thirds of the factories covered had certified standing orders. The certification of standing orders was also a slow process. The State Government, therefore, issued model standing orders which became operative *ipso facto* in those factories and remained in force until the draft standing orders submitted by the management were certified. The Act required the certifying officer to settle the draft after hearing the employer and the trade union.

Code of Discipline

He observed that the Code of Discipline was an attempt at instilling good sense and decorum in solving industrial disputes by the employers and the trade unions through the medium of voluntary restraint. Everybody was willing to lend a helping hand for its success. There were certain lacunae and if they were removed, the chances of success of the Code would be immensely improved.

A manager, for example, was required not to increase work load of a worker unless agreed upon or settled otherwise. This gave an excuse to a worker to shirk duty. It was a function of

a manager to ensure that no worker was either overworked or under-worked. Occasions frequently arose when he had to ask a worker to attend to a particular minor job, either casually or permanently. For instance, if a manager asked a worker to shut the window when it started raining for the first time in monsoon, the latter might refuse to do so on the ground that he had not been asked to do it in the preceding eight months and still would be within the letter of the Code of Discipline. Whether he would also be within the spirit of the Code was for the Implementation Officer to decide.

The Code enjoined on a factory manager to distinguish between actions justifying immediate discharge of a worker from the service and those where discharge should be preceded by a warning, reprimand, suspension or some other form of disciplinary action. No criterion was laid down how such distinction was to be made. The manager was generally averse to army discipline in factory but the guilty worker could always demand that the punishment should be of a lower severity and could always quote the Code against the manager. There was yet another clause which required the manager to take appropriate disciplinary action against his officers in case where enquiries revealed that they were responsible for precipitate action by workers leading to indiscipline. The idea of meting out punishment to officers in such cases was far fetched. It was the guilty who alone should be punished. This clause gave a ground to trade unions to complain that the precipitate action on the part of workers was provoked by the officers and, therefore, the officers should be punished and the workers left scot-free.

The sting of Code was not in its body but in its tail. The Annexures to the Code enunciated the criteria for recognition of the unions. It provided that for securing recognition trade union should cover at least fifteen per cent of the workers in an establishment or twenty-five per cent of workers in the industry in the area. Membership was to be counted only of those who paid their subscriptions for at least three months during a period of six months immediately preceding the reckoning. It also affirmed that when a union was recognised, there should be no change in its position for a period of two years. These provisions in

effect meant that a recognised establishment union might have a membership of less than fifteen per cent of workers or an industrial union of less than twenty-five per cent. The question of membership was something like a test one must pass for securing a diploma or degree. A union could secure recognition with less than fifteen per cent of workers as its members, who would represent all the workers of an undertaking for a period of two years. The membership of a recognised union might have even fallen to nullity, the secretary of the union might have no followers, but notwithstanding that the union would continue to talk on behalf of all workers. Even if another trade union with a majority of workers came on the scene, the recognition accorded to the first union would not be transferred to it. Such cases might be rare but they were not impossible.

Shri Warty concluded by saying that the managers as a class stood for strong trade unions and believed that the first step towards industrial peace consisted of having representatives on either side who could deliver the goods. They wished that while making trade unions strong, the factory management should not be made weak.

Shri G. K. Ved referred to some of the difficulties experienced in day to day operation of the Acts and observed that though the Bombay Industrial Relations Act in Maharashtra was put into operation in various industrial centres, its working in the Bombay City was comparatively better from the point of view of employers. In his opinion, the political leadership of the trade unions in Bombay should find out some methods by which they would go out from the trade union movement and hand over the leadership to those persons who were working in the industry concerned. He expressed dissatisfaction at the methods in which industrial disputes were created by the labour leaders. If a factory introduced certain technical changes which did not affect the workers or their jobs adversely, advantage was taken of the opportunity to create an industrial dispute by interested people on the ground that the employer changed a certain type of work. Such attitude was not conducive to industrial peace.

Referring to the Industrial Disputes Act, he observed that there were a number of persons and workers involved in sponsor-

ing trade unions. These unions, irrespective of whether they were big or small in terms of the membership, were trying to embarass the management by raising disputes to the extent of going on strike on various pretexts for which ample opportunities existed under the provisions of the Act. A lot of valuable time and energy of small industrialists who had to fight cases in courts was wasted.

He observed that there were instances of a company declaring a substantial bonus in a particular year, which was acceptable to almost all workers. The trade union could, however, find some loophole in the declaration of bonus to raise a dispute and fight a long-drawn battel in the court. Such cases were mainly due to the political interests in trade union matters. The union adopted go slow tactics. Time and motion study were looked with distrust and suspicion.

Whenever the management tried to introduce new devices or desired rationalisation of work in accordance with time and motion study, the union adopted go slow tactics with the result that the same ended in failure and waste of valuable time. He remarked that for improvement of industrial relations, two things were most important: (1) the workers should take over the leadership of trade union, and (2) the employer and the employees should be frank and honest in their dealings with each other and whenever there was any grievance they should negotiate for settlement to the satisfaction of all.

Shri D. G. Kale answered some of the points raised by the preceding speakers and stated that there was an inter-relationship between all the three Acts which were being discussed that day, viz. the Bombay Industrial Relations Act, the Industrial Disputes Act, and the Industrial Employment (Standing Orders) Act, and yet each of them stood on its own footing. He also remarked that the Bombay Industrial Relations Act and the Industrial Disputes Act were mutually exclusive in so far as the industries which were covered by the Bombay Industrial Relations Act. It seemed, he continued, that there was some confusion in the speeches of the various speakers. For instance, while speaking about the Bombay Industrial Relations Act, one speaker said that he

was opposed to the principle of having one union for one industry because that brought arrogance in the trade union activities. While discussing the Code of Discipline, the same speaker mentioned that only one union should be recognised. Another speaker stated that there was no strong trade union in Bombay City as in Ahmedabad. Shri Kale observed that it was better to have one strong union than a multiplicity of weak unions with affiliation to different organizations.

He mentioned that there was a basic difficulty in the use of words in various pieces of legislation. Though all labour legislation must provide for all matters to be settled by negotiation, arbitration and adjudication, they were put differently in laws. The difficulty in accepting complex phrases for the sake of precedent was a matter which should not provoke serious criticism. What was necessary was that the Act should be fair and just to both the parties and that it should be precise and easily understood by everybody. It should be difficult for persons with bad faith to misinterpret it. The Acts which were under discussion were comprehensive and detailed and could meet all exigencies.

Shri Kale remarked that it was better if the industrial disputes were settled by negotiations. He denied that the evolution of labour legislations and settlement of industrial disputes dated back from the British times though liberal thoughts emanating from the British contributed to its development. Even in the Indian classical literature, he stated, there were references to workmen, what they were supposed to do; what should be the relationships between the workmen and employers and how the industrial disputes should be settled. Referring to the Industrial Employment (Standing Orders) Act, he informed that at the last meeting of the Standing Labour Committee, it was unanimously decided to make the model standing orders applicable. Regarding a point that the managers were unable to refer a matter for arbitration to the court, he posed a question whether it was possible for a worker to sack the manager. He concluded by saying that the legislations were tools to ensure industrial peace and should, therefore, be observed in spirit rather than in words.

Shri R. J. Tamboli offered the following clarifications on the points raised by the speakers.

(i) It was not possible to dismiss a worker unless gross negligence was proved beyond all doubts against him. This, it was said, was very difficult in practice. The worker guilty of gross negligence must have been a consistant violater of rules and regulations and not amenable to discipline. He must have been charge-sheeted previously. These points were not difficult to be established.

(ii) In settlement of disputes between the employer and the employees, conciliation, arbitration and adjudication were laid down as various methods. There were bound to be differences of opinion between the management and the labour, but these differences should be amicably settled keeping in view the interests of the industry and the economy of the country as a whole.

(iii) Human nature being what it was, the self-interests should be subordinated to the larger interests. The management should be prepared to consider the reasonable demands of the labour and the labour also should take into consideration the interests of the industry. The interests of both parties were interdependent.

(iv) When there were more than one union in an industry, the one which had the largest membership on its roll should be recognised as a representative union. There were certain industries in which harmonious relationship existed between the management and the labour. All disputes were settled amicably and the labour felt that the interest of the workers were closely connected with harmonious relationship between them and the employers. Any harm to industry was a harm to their own interest. If this essential principle was understood by all parties, recourse to labour litigation would be minimised.

(v) The industrial disputes generally consisted of two categories: (i) collective bargaining, and (ii) day-to-day matters. Various rules were laid down with the sole objective of settling them peacefully and with mutual co-operation. The awards and agreements could be terminated by either party by giving a notice of two months.

(vi) A point was raised regarding the refusal of a worker to close a window. If the normal duty of a worker did not include such kind of work, then it was not possible to compel a worker to do such kind of work. A refusal of a worker to do any work not forming a part of his normal duties was upheld even in highly industrialised countries. If the rules were carried out too strictly and to the letter, it would become very difficult for an industry to function. This applied both to the workers as well as to the management. All disputes should, therefore, be settled by mutual co-operation and adjustment.

(vii) There was also a point regarding the inclusion of outsiders in the trade unions, which, it was alleged, lead to difficulties and misleading of workers. In order to solve problems of this nature, it was stipulated that the outsiders should not hold more than fifty percent of the seats of the executive committee of a trade union.

Shri M. S. Warty stressed some of the points raised by him earlier and offered elucidation on others as follows.

(i) There was a difference between a representative union and an approved union; the two should not be confused.

(ii) The settlement of a bonus dispute in textile industry in Bombay was resorted to when other means of settlement like negotiation, voluntary arbitration and compulsory arbitration failed.

(iii) Regarding membership of trade union being 15 percent of workers, what he said was that in these days he would not complain against 15 percent membership.

CONCLUDING REMARKS BY THE CHAIRMAN

Shri D. S. BAKHLE

"As I was listening to the speeches made this evening, I was constantly reminded of a distinction made by an American Judge between Law in books and Law in action. The official speakers were concerned to point out the efficiency of the Law in books; the non-official speakers, who out-numbered the

officials, were concerned to point out the deficiencies of the Law in action. I propose to discard both approaches and make a few observations historical and analytical in nature.

Before 1929, disputes between management and workmen were not a matter of industrial relations but a matter of law and order. The sole function of the State was to keep the ring as it were. But with the growth of Trade Unions, which came to be regulated by an Act of the Central Legislature in 1926, and the growth also of such democratic feeling as could exist in those times, 'keeping the ring' when the contestants were unevenly matched, did not exhaust the role of the State. For the first time, therefore, the Indian Trade Disputes Act was passed in 1929 and enabled the appropriate Government to appoint a Court of Enquiry or Board of Conciliation with reference to industrial disputes. So far as our State, then the Presidency of Bombay, was concerned, Government took a rather paternal attitude and enacted the Bombay Trade Disputes Conciliation Act, 1934, under which a Government Labour Officer came to be appointed to look into the grievances of and represent the workmen in conciliation proceedings.

The real beginnings of industrial democracy occured only under the aegis of the first Popular Ministries. Here the lead was taken by the Government of Bombay, which enacted in the teeth of very strong opposition from stalwart labour leaders, the Bombay Industrial Disputes Act, 1938. This Act, on the one hand, took notice of a variety of Trade Unions, set up a machinery of conciliation and adjudication, and aimed that the day-to-day conditions in factories should be governed by Standing Orders, any change in which or in any other matters would necessitate a notice of change to be given by the party desiring the change. The whole gamut of negotiations ending in agreement, conciliation ending in settlement, and adjudication of the Industrial Court, was provided under the Act. Other Provinces followed the example set by Bombay. But on the resumption of Parliamentary Government in 1946, the Bombay model itself was suitably adjusted to overcome the difficulties which were experienced in practice and the result is contained in the Bombay Industrial Relations Act, 1946. The Union Government followed

suit, in the following year by enacting the Industrial Disputes Act, 1947, based largely on the Bombay Industrial Disputes Act, 1938.

That, with the establishment of Popular Ministries in the Provinces, a more positive line would have to be taken in settling industrial disputes and in providing regular machinery for negotiations, conciliation and adjudication was axiomatic. It is possible to sneer at industrial democracy at this distance of time, but when it was ushered, it was a bold experiment. I recall the reluctance of the employers' and employees' representatives to sit round the same table to discuss the action to be taken preparatory to the enforcement of the Bombay Industrial Disputes Act, 1938. I also recall very vividly the set of Standing Orders in draft produced before the Commissioner of Labour by the employers in one of the textile centres in the Province. They were so stringent that in a fit of desperation I had to ask whether the draft represented the employers' idea of what Standing Order should be or whether it was an extract from the Provincial Jail Manual?

With the passage of time, however, my doubts now are in the other direction, and some times I cannot help reflecting that it is now the employers who have been put in the dock as partners in an industrial democracy. To take one instance from Greater Bombay. Some of the units have imported expensive machinery but have not been able to install it or, if installed, to work it, because labour has adopted dilatory methods in arriving at an agreement or a settlement. I do not want to go into the merits of the case on either side. The thought, however, persisted that from the national angle, such expensive machinery which has consumed so much of our scarce foreign exchange, should not be allowed to lie idle because the two components of industrial democracy are unable to come to terms over its use.

It is precisely the helplessness to which the State has reduced itself that struck me more forcibly only a few weeks ago when both sides were preparing for a show-down on the bonus question. So far as the Representative Union is concerned, it had taken the question to the arbitration of the Industrial Court under Section 73A of the Bombay Industrial Relations Act, 1946. Under

this Section, it is not open to an employer, similarly to take question to the Court for arbitration. But this is only by the way. The case was dragging on before the Industrial Court when a Union which has no status under the B.I.R. Act fixed a date on which, if no settlement was reached and bonus paid, it would call a general and indefinite strike. When conditions had become so critical, all that the State could do was to invoke a reference to the Code for Discipline in Industry, and to the agreement of the management and Union thereunder to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration, and ask the employers to agree to voluntary arbitration as suggested by the Representative Union. In delivering the homily, however, the State had overlooked the explanation furnished at the last Labour Conference that in certain circumstances, it was open to the parties, instead of asking for voluntary arbitration, to be content with adjudication and in dragging the employers to the Industrial Court for arbitration, the Representative Union had made its choice and could not ask for a changeover to voluntary arbitration. This position having been brought to the notice of the State, it approached the Central Organisation of Employers to use its good offices with its recalcitrant member through machinery which certainly was not available for such cases.

Even in an industrial democracy, the State should not reduce itself to such a helpless position. In the past, though in the emergency of the Second World War, the State had armed itself with power to refer a dispute to compulsory arbitration where its continuance would tend to affect production, existing or future employment, or law and order position. Some such power must be available to the State in reserve to be used on behalf of the community in a critical situation like this. This is a serious lacuna in the Bombay Industrial Relations Act to which I have made a reference because it is of topical interest.

I shall now turn to the Code of Discipline, for which good many claims have been made. I do not propose to examine these claims. They may be taken for granted. My coments are of a more fundamental nature. To my mind, this Code and two others which are on the tapis, partake of the nature of what in

continental countries is called Administrative Law. We have, of course, brought this about in our own way, by putting certain provisions of the law and certain moral platitudes on a pedestal and investing them with a halo of sanctimony. I would myself prefer the straightforward course of having legislation, and Parliament surely is not so over-burdened that it cannot find time for any legislation on a subject of labour that is essential. The advantage would be that any question of interpreting the law could be referred to a judicial authority whose decision will be binding and could be enforced. So far as the Code of Discipline is concerned, the interpretation has to be given by an executive officer of Government, and being a democrat I am extremely reluctant to vest such unlimited power in the executive. If there is a breach of the law, one can proceed further in a Court of Law and get the offender punished with fine and/or imprisonment. What is the position regarding breaches of the Code of Discipline? I would invite those of you who are interested to read an article entitled "Some Curious Features of Labour Legislation" which appeared in the issue of the "Capital" dated 18th October 1962. It says: "But in the last analysis, the party which violates the Code is told that its action is wrong, and, at times, that it should apologise to the other party". I do not know whether this is sufficiently deterrent or leaves scope for repetition of the same offence and of course the same sentence!

Quite apart from this, the Code provides that the existing machinery for settlement of disputes should be utilised with utmost expedition. If, I ask, under the existing machinery, a case has been referred by the Union to the compulsory arbitration of an Industrial Court, how can the State, which is the implementing authority in the ultimate analysis, ask the employer to agree to voluntary arbitration by invoking the code in the same case? This is not an only instance of conflict between the existing law and the Code. How and by whom is this conflict to be resolved?

I hope I have not conveyed to you the impression that the Code for Discipline in Industry has not achieved anything. It certainly has produced a Grievance Procedure and indirectly brought about recognition of Unions by laying down criteria for

recognition. These are positive achievements, though they fall much short of the claim which has been made for the Code of Discipline.

I would like in the end to say that my comments on the Industrial Relations Act as well as the Code of Discipline, though somewhat blunt, have been made in a constructive spirit. Unless we know where the defects are, we can never hope to improve them. All that I am stressing is that there are defects and there is much scope for improvement. I thank you".

BOMBAY SHOPS AND ESTABLISHMENT ACT, 1948
MINIMUM WAGES ACT, 1948
PERSONNEL MANAGEMENT ADVISORY SERVICE

Chairman
Dr. K. S. Basu,
Personnel Director, Hindustan Lever Ltd.

* * * *

Summary of Discussion

Shri L. C. Joshi referred to the Bombay Shops and Establishments Act, the main purpose of which was to govern the conditions of employment in shops and commercial establishments, hotels and clubs which were open to the public, and observed that it was similar in its provisions to the Factories Act and the Motor Transport Workers Act and was administered by the Bombay Municipal Corporation in Greater Bombay. He raised the following points regarding the Act, which needed clarifications.

(i) It was not clear whether the training establishments maintained and run by several commercial establishments were subject to the provisions of the Bombay Shops and Establishments Act. The point arose whether these training establishments could be classified as educational institutions, so that they would not be governed by the Bombay Shops and Establishments Act by virtue of the exemption granted to educational institutions.

(ii) It was not clear whether the clubs, which were not open to the public but to its members only, were also covered by the Bombay Shops and Establishments Act.

(iii) In Bombay city, there were several commercial establishments with sub-offices or godowns located in different parts of the city for want of accommodation at one place. The point arose whether these several offices and godowns were required to be registered separately under the provisions of the Bombay Shops and Establishments Act. Though it had been held by

the authorities administering the Act that separate registration was necessary for each office or godown irrespective of whether they were parts of one commercial establishment located in the city itself, a view could be taken that it would not be necessary to have each and every office or godown registered separately and that it would be sufficient if one registration was made in respect of the whole establishment including its sub-offices as well as godowns.

(iv) Section 35 (1) (a) of the Act provided that every employee who was employed for not less than three months in any year should, for every sixty days on which he worked during the year, be allowed leave for a period of not more than five days. The question arose whether the service period of three months should be continuous or it should be taken to mean ninety days in course of one year.

(v) In Section 35 of the Act, sub-section (i) (b) laid down the qualifying period for leave as 240 working days during a year, whereas under sub-section 1A, the qualifying period for leave was laid down as 270 working days in a year. 'A period of 270 working days' was mentioned in sub-section (1) (b) of Section 35 of the Act before it was amended in 1961. It was not clear whether the person who drafted an amendment overlooked the fact that the period would also have to be modified in sub-section 1A of Section 35 of the Act or the omission was deliberate.

(vi) Under Section 70 of the Act, if an employee was working in a shop or an establishment situated within the precincts of a factory on a job which was not connected with the manufacturing process, the Factories Act was not applicable to him and he was governed by the Bombay Shops and Establishments Act. As the provisions of these two Acts were not identical in all respects, discriminatary treatment was meted out to a class of employees. Under the Bombay Shops and Establishments Act, leave was available for twenty days in a year, whereas under the Factories Act, a day's leave was allowed for every twenty working days. Over-time was not allowed under the Factories Act without the permission of the Factories Department, whereas overtime for four hours was possible under the Shops and Establishments

Act. Payment for overtime work was allowed at different rates under these two Acts; the Shops and Establishments Act allowed overtime allowance at the rate of one and half times the ordinary. wages.

(vii) The problem of overtime payment to travelling representatives and motor car drivers needed clarification. Duties of motor car drivers were intermittent and sometimes they were required to stay on work for longer hours. Travelling salesman might travel day and night and a point arose whether all the time he was on journey should be treated as a period of duty.

Referring to the Minimum Wages Act, Shri Joshi observed that there was no necessity of making the Act applicable to the commercial establishments, as the employees in commercial establishments were well organised and employment facilities like leave, overtime, etc. available to them were governed by the provisions of the Shops and Establishments Act. As a result of the application of the Minimum wages Act to the commercial establishments, the employers were required to satisfy the Shops Inspectors as well as the Inspectors under the Minimum Wages Act and to maintain a multiplicity of registers and records which were not strictly necessary.

He then referred to the Personnel Management Advisory Service started by the Government for use of small and medium sized establishments. He observed that the service was of a very limited use in view of the statutory authorities under labour enactments. The way in which it was administered was also not satisfactory. The officers administering the personnel management service should approach the factory managers, on their own accord for offering informal advice but here in our country they would first call the factory managers to come to their office and discuss the matters. A Labour Officer, who was also a Conciliation Officer, administered the service with the result that it was not known at a time whether that officer was acting in his capacity as a conciliation officer or as an officer administering the Personnel Management Advisory Service. He suggested that if the Government was keen in making the Service successful, it should be entrusted to a separate cadre of officers.

Shri C. P. Rele observed that, from the official point of view, whenever any establishment was not covered by the Factories Act, it must be amenable to the Bombay Shops and Establishments Act. Such applications of these Acts caused harassment to the employers. To illustrate, he cited an experience of a structural company which was engaged in the welding of imported components parts on prepared foundation with the help of welders and mazdoors. A Factory Inspector first visited the works and said that the Factories Act would be applicable to the organisation. On second thought, he had a close look at the work going on and concluded that as no manufacturing process was involved, the Factories Act would not be applicable. Soon after, the Inspector under the Minimum Wages Act appeared on the scene. He viewed that the set-up should go under the schedule of road construction. Next came the Inspector of Shops and Establishments, who without making appropriate inquiries, hauled the company in a court of law on the ground that musters and registers which were required to be kept under the Bombay Shops and Establishments Act were not maintained, though in fact he did not take sufficient care to see that all the musters and registers were maintained in accordance with the provisions of that Act at the head office of the company and the workers were given good wages and moreover the rate of overtime allowance was much more than what was stipulated by the Act.

He referred to Section 70 of the Shops and Establishments Act and observed that it has created a confusion. Section 70 stipulated that nothing in the Bombay Shops and Establishments Act should apply to a factory and any person employed in and in connection with a factory would be governed by the provisions of the Factories Act notwithstanding anything contained in the Bombay Shops and Establishments Act. A provision to the section created further complications. It provided that where any shop or commercial establishment situated within the precincts of a factory was not connected with the manufacturing process of the factory, the provisions of the Bombay Shops and Establishments Act should apply to it. It remained to be clarified what was meant by the term 'factory'—whether it was a factory shed, premises of a factory or precincts of a factory.

He also referred to the applicability of the Minimum Wages Act and the Bombay Shops and Establishments Act and the resultant confusion regarding payment of overtime. In this connection, he invited attention to the recommedation of the Committee appointed by Government sometime back on the implementation of the Minimum Wages Act and the Bombay Shops and Establishments Act.. The Committee considered the problem of overtime payment and came to the conclusion that while the hours of work put in over and above forty eight hours of work a week were a legal overtime, the hours of work put in extra but less than forty eight hours a week were an ordinary overtime. It, therefore, suggested that different rates should be prescribed for ordinary overtime and legal overtime. Payment for legal overtime was to be made in accordance with the provisions of the Bombay Shops and Establishments Act and payment for ordinary overtime was to be made in accordance with the rates recommended by the Committee. The recommendations of the committee were accepted by Government. However, when a notification was issued, it was found that only minimum rates recommended by the committee were published and no mention was made of the rates for overtime payment. The result was that under the provisions of the Bombay Shops and Establishments Act overtime was paid at one and half times the ordinary wages and at double the rate of ordinary wages under the Minimum Wages Act. All this confusion needed clarification.

As regards to the Personnel Management Advisory Service, his experience was that in administration of the service too much emphasis was laid on legislative aspects, which should have been put aside if informal discussions were to be fruitful.

Shri D. G. Kale replied to the points raised by the earlier speakers regarding the Minimum Wages Act and the Personnel Management Advisory Service and stated that the points raised regarding the Bombay Shops and Establishments Act would be clarified by the representatives of the Bombay Municipal Corporation.

As regards to the difficulties experienced by the employers arising out of the applications of the Minimum Wages Act as also of the Shops and Establishments Act, he mentioned that

representations were received stating that filling up of forms had become a burden upon the employers. The administration was very much alive to the difficulties; complaints were received with the maximum consideration and efforts were made to find solutions. It was explained to the employers that if they were paying minimum wages to their workers, the filling in the forms was secondary and that if the registers conformed to the essentials of the scheme, maintenance of separate forms would not be insisted. In order to avoid multiplicity of forms, it was hoped that some suitable form would be evolved in the near future.

So far as the application of the Bombay Shops and Establishments Act was concerned, he informed that there was a scheme of granting exemptions to big concerns which paid higher than the prescribed wages to their employees and where there was no question of paying minimum wages. This facility was being utilised and most of the concerns might not have any difficulty in getting exemption from the Act. The numerous small commercial establishments were being given protection and there was no Act, under which they could obtain the protection, other than the Minimum Wages Act.

He referred to the criticism of the Personnel Management Advisory Service and mentioned that the service was started by way of experiment because many persons felt that there was a need to supplement the official machinery under the Bombay Industrial Disputes Act and the Industrial Relations Act. The scheme thus desired by the parties concerned was to be out of purview of all Acts and had to be of purely informal and advisory nature. It was also intended to keep it as a separate compartment and not to mix it up with the regular machinery of labour offices. Every effort was made to keep its distinct nature. After some time, it would be possible to have a separate cell associated with the Labour Office to deal with the Personnel Management Advisory Service. Due to various factors this arrangement could not be achieved earlier. But when it would materialise, all the difficulties would disappear.

It was true that in England the Personnel Management Service served the employers by going to their doors when advice was requested. On examination it was thought that the system

could not be operated in India in the same manner. Some American experts on the problem were consulted. In the United States, the idea was the additional personnel management advisory service; whereas in Britain, it was a sort of preventive mediation. It was thought that the American system might have better application in this country. At the same time the Personnel Management Advisory Service was in addition to the usual services provided by the Labour Department. If after having recourse to the Personnel Management Advisory Service a person did not want its service, he could always switch off at a moment's notice. The results obtained by this service, in the opinion of Shri Kale, were satisfactory. He cited an example from his experience in this connection. A complaint was made to him that a certain employer committed a breach of the standing orders. Both the parties to the complaint were called together to the Labour office. Both the parties requested him to put himself into the foot of Personnel Management Officer. After his having done so, the matter was settled in a few minutes.

Regarding the point that the machinery was too much wedded to the legislative aspect, he assured that the matter was being looked into in order to dissociate it from the usual legal procedure and make it more useful. He concluded by saying that the service being voluntary was entirely dependent upon the co-operation of the employers and the employees.

Shri R. J. Tamboli replied to some of the points which were raised by the earlier speakers and needed clarifications. He referred to the difficulties experiencd by the Inspectors under Shops and Establishments Act and the Minimum Wages Act in checking the records at the head offices of the establishments and observed that when an Inspector went to an establishment, he was often told that the proprietor was not available and that as the records were under lock and the proprietor had the key, it could not be shown to him. Similar other excuses were invented by the employers to evade the inspection of records by the Inspectors each time they visited the establishment. As the number of shops and establishments covered by the Bombay Shops and Establishments Act was quite large, it was practically not possible for an Inspector to go to each shop or establishment

frequently. The Inspectors after all were paid from the public fund which could not be wasted. Full co-operation was, therefore, needed from the employers when an Inspector went to an establishment or shop. If registers or musters were not kept according to the provisions of various labour laws, reasonable opportunity was given to the employers to comply with the provisions. If they did as directed, there was no question of prosecution. If an employer was recalcitrant, prosecution was sometime resorted to out of necessity.

He referred to the point raised regarding payment of overtime allowance under the provisions of the Bombay Shops and Establishments Act and the Minimum Wages Act. Though under the Minimum Wages Act, the overtime allowance at double the rate of normal wages was payable to the employees, some of the employers were very legal minded and took advantage of the wording of the Act by paying overtime at double the rate, not of normal wages but of the minimum wages fixed. In majority of the cases, the overtime was paid at very low rates. In some cases, it was paid not only at low rates but also for less than extra hours of work actually put in.

Regarding Personnel Management Advisory Service, he mentioned that the service was started in 1959 on popular demand to advise the employers for development of happy and harmonious relations between them and the employees. The object of the service was that all problems concerning industrial disputes should be settled by mutual negotiations, adjudication and arbitration, so as to avoid strikes, lock-outs, etc. In the larger interests of the industry, the industrialists and the employees should sink all differences and solve all their problems amicably. Large number of employers and representatives of employees were taking advantage of the facility. However, owing to paucity of officials, the administration of the service was carried out by the office of the Commissioner of Labour. So far the service, which was voluntary and impartial, worked well and more and more employers and employees were taking advantage of it.

Shri V. V. Joshi observed that though the grievances voiced by some enlightened employers in respect of working of the Bombay Shops and Establishments Act and the Minimum Wages

Act appeared to be genuine, there was another class of owners and employers who did not have scrupples in violating the laws by resorting to malpractices. In Greater Bombay alone, he mentioned, there were more than 1,10,552 shops and Establishments under the purview of the legislation and about 65 Inspectors engaged in supervision of the administration of the Act. Each Inspector was, thus, required to visit about 1700 shops and establishments in course of a year. Taking into consideration the large number of shops and establishments allotted for inspection to each Inspector, the difficulties experienced by him could be easily imagined. As there were quite a few employers who had no respect for laws and deliberately created obstructions in their operations, an Inspector was required, in many cases, to visit a shop or establishment more than once. The Inspectors who were uncooperative or created hardships for the employers were suitably dealt with by the Municipal Corporation.

Shri N. J. Alvares observed that the Bombay Shops and Establishments Act was a social piece of legislation governing the working conditions of employees in shops, commercial establishments, eating houses, restaurants, residential hotels, theatres and other places of public entertainments. He traced in brief the history of the Act. He stated that though the industrial workers in India had their service conditions regulated as far back as in 1881, employees working in shops and commercial establishments did not enjoy the protection of any such legislation and it was only in the year 1939 that the Government of Bombay took the lead in passing legislation known as the Bombay Shops and Establishments Act, 1939, which regulated the hours of work and other conditions of employment of these persons. An unfruitful attempt to introduce a measure of this type was made in 1934, but, though public opinion was overwhelmingly in its favour, the bill was defeated in the Council. In the subsequent years, other provinces passed similar legislation and by 1948 most of the provinces had some legislation governing the conditions of work and hours of employment of employees working in shops, restaurants, commercial establishments and theatres.

The working of the Bombay Shops and Establishments Act, 1939, in the province of Bombay brought to light certain defects

and deficiencies and a Committee was appointed by Government to go into the matter and suggest remedies. The Committee submitted its report in December, 1947, and on the basis of its report, the Government of Bombay introduced a bill which was ultimately passed as the Bombay Shops and Establishments Act, 1948. It came into force in January 1949.

Under Section 43 of the Act, the administration of the Act had been entrusted to the local authorities subject to such supervision of the provincial Government as might be prescribed. In the event of default on the part of any local authority in enforcing the provisions of the Act, the Government had power to appoint some person or persons to perform these functions and direct that the expenses of performing them should be paid by the local authority. The local authorities were required under the Act to submit to the Provincial Government annual reports on working of the Act within their areas. The annual reports submitted by the local authorities disclosed that the Act had in many areas not been worked in the spirit in which it was expected to be worked. Several local authorities were also found slack in enforcement and detection of irregularities. The Government, therefore, appointed a special officer to go round the local areas, study the working of the Act and make suggestions regarding methods and standard of enforcement. The special officer submitted his report in 1955, and on the basis of that report, several provisions in the Act have now been amended and incorporated in the Bombay Shops and Establishments (Extension and Amedment) Act, 1960 which came into force from October 1961.

Shri Alvares then described in brief the main provisions of the Act. The Act deals with five categories of establishments, viz. shops, commercial establishments, eating houses and restaurants, residential hotels and lastly theatres and other places of public entertainments and amusements. All these various types of establishments are required under Section 7 of the Act to get themselves registered by filling in the 'A' form which contains columns for the name of the employer, the name of the manager, the category of establishment and the nature of business, the names of persons in a confidential or managerial capacity, names of members of the employer's family and the total number of employees. A registration fee of Rs. 2.50 for shops having no

employee and Rs. 5/- for other shops and all other categories of establishments has to be paid. Any change taking place in any of these items has to be notified in 'E' form as laid down in section 8 of the Act. The registration has to be renewed annually. The purpose of annual registration is to give a stable source of revenue to the local authorities for running the department and to have latest information relating to the number of establishments and the number of employees covered by the Act.

A commercial establishment has been defined as an establishment which carries on any business, trade, profession or work in connection with or incidental or ancillary to any business, trade or profession and includes a society registered under the Societies Registration Act, 1960, and a charitable or other trust, whether registered or not, which carries on for purposes of gain any business, trade or profession or work in connection with or incidental or ancillary thereto. The definition of a commercial establishment is, thus, wide so as to bring within its fold professioners like doctors, architects, engineers, etc.

In the case of commercial establishments, the Act provides for opening and closing hours of business. No commercial establishment can open earlier than 8-30 A.M. or close later than 8-30 P.M. in Greater Bombay. The hours of work of employees in a commercial establishments are the same as those in shops viz. nine hours a day or forty eight hours a week. Overtime of three hours in a week is allowed. Additional overtime is, however, permitted only on six days in a year for the purposes of preparing accounts and making settlement.

An employee must not be permitted to work continuously for more than five hours without allowing him an interval of one hour for taking rest. If the employees consent, a rest interval of half an hour is permitted with the prior sanction of Government, which is normally given on the condition that the time of departure of employees is reduced to that extent. Each commercial establishment has to remain closed one day in a week but in order to prevent inconvenience to the public, certain exemptions from this provision are granted to doctors' dispensaries, hospitals, sections in banks pertaining to safe deposit vaults, lockers or godowns, employees in establishments exclusively attending to

receipt, delivery, clearance or despatch of goods or to those assisting travel arrangements of passengers by rail or other means of transport. In such cases, employees are to be given a holiday during the week. On a day when the commercial establishment is officially closed, it is an offence for the employer to call and for an employee to go to the establishment or any other place for any work in connection with the business of the commercial establishment.

There are special provisions in the Act pertaining to employment of young persons and women. The Act provides that a young person cannot be allowed to work earlier than 6.00 A.M. or after 7.00 P.M. There is a similar restriction on employment of women. The hours of work of a young person also cannot exceed six hours on any day and he has to be given half an hour's rest interval after three hour's work. There are certain exemptions under these provisions.

Special provisions regarding leave facilities also exist in the Act. Previously every employee who had worked for not less than 270 days during a year was to be allowed during the subsequent year leave, consecutive or otherwise, for a period of not less than 14 days inclusive of day or days on which a shop or commercial establishment remained closed during the period of such leave. The employee was permitted to accumulate this leave for a period of 28 days. If an employee entitled to such leave was discharged by his employer before he had been allowed the leave, or if having applied for and having been refused leave, he quits his employment before enjoying such leave, the employer is required to pay him the wages for such leave period. These provisions about leave have now been liberalised.

Shri Alvares then offered the following clarifications to various points and questions posed by Shri L. C. Joshi and Shri C. P. Rele.

(i) Training Activities

The first question posed was whether the training centres of various commercial establishments were governed by the Bombay Shops and Establishments Act or exempted by virtue of entry

6 (f) of Schedule II to the Act. As the training establishments of the commercial establishments were meant to train persons for specialised jobs like mill workers, insurance official, bank employee, etc., such establishments could be classified as educational institutions and would, therefore, be exempted from the provisions of the Act.

(ii) The applicability of the Act to clubs which were not open to the public but to their members:

If a club was a residential club, then it would fall in the category of residential hotels and would come under the purview of the Act. Any premises used for the reception of guests, etc., such as Cricket Club of India, National Sports Club of India, etc. are governed by the Act. If, however, no residential facility exists, the Act is not applicable as in case of Radio Club, Rotary Club. etc.

(iii) Registration of Sub-offices and departments:

If sub-offices are meant to be the branches of organisations like banks, insurance companies, Life Insurance Corporation, each branch or sub-office is considered to be a separate unit or establishment and as such requires separate registration. If, however, a sub-office is a department, forming part and parcel of the parent establishment, it is felt that a separate registration was not necessary.

(iv) Clarifications regarding Section 35 of the Bombay Shops and Establishments Act:

(a) The shops and Establishments Department of the Bombay Municipal Corporation holds the view that the qualifying service of three months which was necessary for an employee to become entitled to leave under section 35 (1) (a) should be continuous.

(b) In sub-section (1) (b) of Section 35 of the Act, it is laid down that every employee who has worked for not less than 240 days during a year shall be allowed leave for a period of not less than twenty one days, whereas sub-section 1A of Section 35 states that if the services of an employee, who has been in the employment for not less than a year and who has worked for ninety days or more but for less than 270 days during any subse-

quent year, are terminated in such a year, he shall in addition to the leave under Sub-section (1) become entitled to such leave in such year for the number of days which bears to fourteen days, the same proportion, as the number of days for which he worked to 270 days. The difference between qualifying periods for leave, 240 days in sub-section (1) (b) and 270 days in sub-section 1A of Section 35 of the Act, appears to have been made because in the latter case the services of an employee are terminated and, therefore, the period of leave allowed to him is less than that is permitted to an employee who continues to be in service.

(v) Clarification regarding section 70 of the Bombay Shops and Establishments Act.

In order to understand the implications of the section, it was necessary to go into the history of the section. Under the original Shops and Establishments Act of 1939, a clerical department of a factory was governed by the Shops and Establishments Act under the then definition of commercial establishment which read as under:

"A commercial establishment means an establishment which is not a shop but which does the business of advertising, commission, forwarding or commercial agents and which is a clerical department of a factory or an industrial undertaking".

The working of the Act of 1939 brought to light the fact of dual control by Factory Inspectors over the factory and by the Shops and Establishments Inspectors over the clerical establishments of a factory. In order to do away with the dual control, Section 70 of the Bombay Shops and Establishments Act of 1948 provided that nothing in the Act should be deemed to apply to any person employed in or within the precincts of a factory and the provisions of the Factories Act, notwithstanding what was said in the Act, would apply to such persons. The Bombay Shops and Establishments Act, thus, amended the Factories Act, although this might not be the correct way of putting the matters right.

As a result of this provision there were certain establishments working within the precincts of a factory that came to be governed neither by the Factories Act nor by the Bombay Shops and Esta-

blishments Act. The Factory Inspectors stated that the persons employed were not workers as the establishment was not a factory and, therefore, were not subject to the Factories Act. The Inspectors under the Shops and Establishments Act would say that the establishments were situated within the precincts of a factory and were, therefore, precluded from the operation of the Shops and Establishments Act. With a view to remeding this state of affairs, the present Section 70 of the Act was substituted in 1952 for the original.

(vi) Payment of overtime :

If overtime work was done over and above the normal working hours but below the statutory working hours, the overtime should be paid on the basis of ordinary wages, and if it was done over and above the statutory working hours, the overtime should be paid one and half times the normal wages.

Regarding overtime work done by the travelling representatives and motor drivers, overtime allowance was payable if the hours of work were such as could be controlled by the employers. Sometimes workers were sent out on duty and they return to the place of work after the closing hours. In such cases, it was not possible for the employers to control their working hours. But so long as the employees were under the control of and at the beck and call of the employers, they should be paid as if they were made to work beyond the scheduled hours of working.

(vi) If ten or more employees acting in concert remain absent without reasonable cause and due notice, deductions equal to wages of eight days can be recovered from wages of each employee for such absence.

The Courts can examine the justifiability of deduction of wages of full days.

(e) Wages

Wage means remuneration payable to employee on his fulfilling the terms of employment, express or implied. The terms include those conditions which are accepted by long practice. The wages also include the below mentioned remunerations.

(i) Bonus payable under terms of employment.

(ii) Remuneration payable under any award, settlement or order of court.

(iii) Over-time wages, leave with wages and holidays for which an employee is entitled.

(iv) Any sum payable under any law, contract or instrument on termination of employment i.e. notice pay, retrenchment compensation, wages in time of leave, etc. Any sum to which an employee is entitled under any scheme framed under any law in force.

The following dues are not wages:-

(i) Lay off compensation.

(ii) Damages for wrongful dismissal.

(iii) Bonus which does not form part of contract, settlement or award. However, such type of bonus is wages for the purposes of paying in the form of National Plan Savings Certificates. Hence bonus amount exceeding one fourth of the annual earnings excluding dearness allowance must be paid in the form of twelve years National Plan Savings Certificates.

(iv) Value of house accommodation, supply of light, water, medical attendance or any amenity or service excluded

by State Government by special or general order, from computation of wages.

(v) Any contribution paid by employer to pension or provident fund.

(vi) Any travelling allowance or concession.

(vii) Any sum paid to defray special expenses entailed by nature of employment.

The employer is a person who employs other persons on wages. A contractor employing persons in a factory or industrial establishment is also an employer. Every employer is responsible for the payment of wages to persons employed by him. If a person has been named as the manager of the factory under the Factories Act, 1948, then the person so named and the employer are jointly and severally responsible for payment of wages. In an industrial establishment, if there is a person responsible to the employer for the supervision and control of the industrial establishment then the person so responsible and the employer are jointly and severally responsible for payment of wages.

The Act contains the provisions for the appointment of Inspectors and Judicial Authority. Inspectors under the Act are vested with powers to enter the premises and examine any register or document relating to the calculation of payment of wages. They are also empowered to exercise such powers as are necessary to carry out the purposes of the Act. In exercise of these powers, the Inspector can help an employee to get his rightful wages within the prescribed period.

The Authority appointed under the Act has the jurisdiction to hear and decide for any specified areas all claims arising out of deductions from wages or delays in payment of wages. The jurisdiction of ordinary civil court is ousted to this extent. The aggrieved employees can make an application to the Authority within twelve months from the date when the wages were due. The delay in making an application may be condoned if sufficient cause is shown. No court fee is required to be paid in this court by the employee making an application.

The Authority can adjudicate upon the following issues if necessary in deciding the claim for deductions from wages or delay in payment of wages.

(i) Legality or otherwise of the strike or lock-out.

(ii) The fact of employment, the terms of contract or agreement under which the employee is employed.

(iii) All questions incidental to the claim.

(iv) The contract in existence for the relevant time.

However, the Authority has no jurisdiction in the following matters.

(i) To decide potential wages,

(ii) Whether the employment was rightly or wrongly terminated or whether the dismissal was lawful or unlawful,

(iii) If two contracts are set up, as to which contract governs the relationship of employer and employee.

If the Authority finds that the wages were due but not paid or the wages have been illegally deducted, it can make an order to pay the wages due to the worker and also can award compensations to the extent of Rs. 25/- in favour of the employee. The Authority has to make an order against the employer to pay court fee. If the Authority arrives at the finding that the application made by an employee was vexatious or false, it can order the employee to pay penalty to the extent of Rs. 50/- which may be paid to the employer.

Any amount directed to be paid in settlement of claims arising out of wrongful deductions under this Act is recoverable from the employer as arrears of land revenue. The aggrieved party may prefer an appeal against the order of the Authority in small causes court in presidency towns and elsewhere in the district court. But the employer is required to deposit the directed amount with the Authority and attach the certificate to that effect to the memorandum of appeal. There

cannot be an appeal by an employer if he is directed to pay Rs. 300/- or less and by an employee if the total amount of claim is Rs. 50/- or less.

Failure on the part of employer to discharge the liabilities is treated as an offence. The offence of illegal deductions and delay in payment of wages are punishable with a fine to the extent of Rs. 2000/-. However, an employee cannot prosecute the employer unless he succeeds in the application before the Authority and takes prior sanction of the prescribed authority. Non-maintenance of registers and records is also an offence with a fine to the extent of Rs. 200/-. Prosecution can be taken up by the Inspectorate under this Act.

BOMBAY MATERNITY BENEFITS ACT, 1929

By

Dr. (Smt.) R. Madan,

Lady Inspector of Factories.

The Bombay Maternity Benefits Act regulates the employment of women in factories for certain period before and after child birth and provides for the payment of maternity benefit to them. It is applicable to those factories which are not covered by the Employees' State Insurance Scheme. According to the provisions of the Act no employer should knowingly employ a woman in any factory during the four weeks immediately following the day of her delivery and that she should be entitled to the payment of maternity benefit.

A woman is not entitled to maternity benefit unless she has been employed in the factory of the employer from whom she claims maternity benefit for a period of not less than nine months immediately preceding the date on which she gives notice of pregnancy. The maximum period for which any woman is entitled to payment of maternity benefit is eight weeks, four weeks upto the day of her delivery and four weeks immediately following that day. If a woman dies during that period the maternity benefit is payable upto the day of her death to the person who takes the care of the child or to her legal representative.

A woman who is pregnant may give notice in writing to her employer stating that she expects to be confined within one month and the employer should thereupon grant her leave from the following day until four weeks after the day of her delivery. Maternity benefit is paid for the actual days of absence for the period immediately preceding her confinement and for four weeks immediately following her confinement. It is usually paid in two instalments. The first one is paid when the worker proceeds on maternity leave and the second instalment is paid after she produces a certified extract of the birth of her child. When a woman absents herself from work in accordance with the

provision of this Act it is not lawful for her employer to give notice of dismissal.

If any woman works in any other factory after she has been granted maternity leave, she forfeits her claim to the payment of maternity benefit. If the employer contravenes the provisions of this Act, he is liable to a fine.

The employer of every factory covered under this Act has to maintain a maternity benefit register giving the full details of the date of employment, the dates of maternity leave and the amount of maternity benefit paid, and the certified extracts of birth. These records are checked by the Inspectors at the time of their visit to the factory.

A factory has also to submit to the Chief Inspector of Factories by the 15th January in each year a return in the prescribed form giving the following details.

(i) Average number of women employed daily

(ii) Number or women who claimed maternity benefit

(iii) Number of women who were paid maternity benefit

(iv) Number of other persons who were paid maternity benefit

(v) Total amount of maternity benefit paid.

EMPLOYEES' STATE INSURANCE ACT, 1948:
POINTS FOR DISCUSSION

By

Shri S. V. Utamsingh,

Chief Personnel Officer,

The Associated Cement Cos. Ltd.

I. The earlier expectations entertained by the Employers and the Workers when the Act was passed and the extent of their non-fulfilment in the subsequent decade and a half.

II. The three forms of administration of the medical benefits.

(i) The integration of existing medical facilities in Industry with the E.S.I. network.

(ii) The opening of separate Government Hospitals and Dispensaries.

(iii) Appointment of panels of doctors in large cities.

III. Administrative difficulties and anomalies created are listed below:-

a. (i) Non-standardization of the form of agreement for integration of medical facilities;

(ii) The philosophy or the lack of it behind the response of the authorities to the Industry's offer to integrate their existing medical facilities with the E.S.I. Medical set-up;

(iii) Part-integration, such as, outpatient care with non-integration of hospitalization facilities;

(iv) The voluminous clerical work imposed on the Insurance Medical Officer;

(v) The inordinate delays in receipt of capitation fee from the authorities;

(vi) The specialists and the certificates they issue;

(vii) The specialists and the costly medicines they prescribe;

(viii) Arbitrary exclusion of part of industrial establishments from the scope of the Act.

b. (i) The frequent non-availability of the doctor and the medical staff;

(ii) The inconvenient location of the Government hospitals and dispensaries;

(iii) The non-reservation of beds for insured employees in general hospitals; and

(iv) The indiscriminate issue of certificates by E.S.I. Medical Officers.

(v) Absenteeism and other abuses almost inherent in the Panel System.

c. (i) Under Section 40 arbitrary restriction on employer's right to recover shortfalls of employees' contributions;

(ii) Under Regulation 97, different approaches to provision of sick leave on full pay and half pay;

(iii) The inconvenience of affixing contribution stamps;

(iv) The difficulty in obtaining franking machines and the procedure of loading and re-loading;

(v) The avoidable clerical work arising from the computation of the daily average wage for each wage period;

(vi) Unnecessarily wide definition of a "Worker" under the Act;

(vii) The inclusion and exclusion of employees on the border line of remuneration at Rs. 400/- p.m.; and

(viii) The anomaly of the Employer bearing the incidence of the Employees' contribution in certain cases.

EMPLOYEES' STATE INSURANCE ACT, 1948

By

Shri L. C. Joshi,

Labour Adviser,

Bombay Chamber of Commerce and Industry.

The Employees' State Insurance Act, 1948, which is a pioneering Social Insurance Scheme, is applicable not only to factory workers but also *inter alia* to members of the clerical staff whose work is connected with or incidental to 'manufacturing process'. It covers all employees in the above mentioned categories provided their individual remuneration in aggregate does not exceed Rs. 400/- per month.

Administration

The Scheme as such is laudable but in its practical application it has created manifold problems. For instance, the administration of medical benefit is entrusted to State Government although the latter contribute only one eighth of the expenses incurred on provision of medical treatment and attendance of insured persons and their families. Furthermore, the State Governments are unable to give better medical treatment to industrial labour in preference to members of the general public. The result is that the State Insurance Corporation which contributes the major share of medical cost has a very small role to play in the medical treatment of insured persons and their families and its difficult position is on many occasions misunderstood by insured persons and the Corporation is blamed for things, for which it is not, strictly speaking, responsible.

Utilisation of Funds

Although the Corporation has at its disposal funds to the tune of several crores of rupees it has been able to construct only one hospital for insured workers so far. The result is that hospitalization facilities for the workers covered by the Scheme are inadequate and unsatisfactory. It is, therefore, essential that the Corporation should immediately undertake the construction of new hospitals in different areas in Greater Bombay.

Lax certification

There are numerous complaints about the service given by the Panel Doctors. It appears that the workers mainly use them for obtaining certificates in order to regularise their absence without leave. This has led to abnormal increase in absenteeism. The protection granted under Section 73 of the Employees' State Insurance Act is of such a comprehensive nature that even workers, who are likely to be dismissed on account of thefts or who are due for retrenchment in the normal course, cannot be sent away without infringing the provisions of the law and the certificates issued by panel Doctors are mainly used for taking undue advantage of this legal protection.

Contributions and Benefits

The Employees' State Insurance Scheme is applicable only to those workers who are getting individual remuneration in aggregate of Rs. 400/- per month. In cases where workers are entitled to production bonus in addition to wages and dearness allowance, the monthly emoluments sometime exceed Rs. 400/- per month and as a result the workers become ineligible for the benefits. This position ought to be remedied.

The Corporation should examine whether the present system of weekly contributions can be substituted by monthly contributions in view of the fact that the payment of wages is usually made at the end of the month either on the 7th or the 10th of the following month.

Authorised Leave:

There is no definition in the Act of the term "authorised leave". In view of Section 42, the employer has to pay both employees' and employer's contribution in respect of an employee who cannot attend work for some personal reasons. Unless it is known definitely what is meant by "authorised leave" the employer is not in a position to determine whether the employee should be treated as absent with leave or absent without permission. In several cases the employer allows the employee to remain absent but does not necessarily pay him wages for these days. To get over this situation arising out of Section 42, it is suggested that the section may be amended. It

may be considered whether the expression "authorised leave" in sub-clause (5) could be replaced by the term "paid leave".

Recovery of Damages

Section 66 authorises the State Insurance Authorities to get themselves reimbursed by the employer in cases where any employment injury is sustained by the insured person under the Act by reason of the negligence of the employer or his agent to observe any of the safety rules laid down under any enactment applicable to the factory or the establishment or by reason of any wrongful act. There are cases where even the Factory Inspector had not asked the management to provide any safety devices and due to the sheer negligence of the employees accidents had taken place. The State Insurance Authorities, however, ask the employer to reimburse the payment of disablement benefit made to the insured person. This section should, therefore, be suitably amended.

NOTES ON INDUSTRIAL DISPUTES ACT, 1947 BOMBAY INDUSTRIAL RELATIONS ACT, 1946 INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

By

Shri R. J. Tamboli,

Deputy Commissioner of Labour, Maharashtra State.

Act and Code of Discipline

In the absence of labour legislation the workers had to resort to strike if their demands were not conceded by the employers. The relations between the employers and employees were more or less governed by the principle of "demand and supply." In the interest of national economy and production and also to safeguard the interests of workers it was essential to provide some machinery for the settlement of disputes between employers and employees and to regulate the industrial relations. The Industrial Disputes Act and the Bombay Industrial Relations Act provide such machinery.

The Bombay Industrial Relations Act is made applicable to certain industries only. These are (1) Cotton Textile, (2) Silk Textile, (3) Woollen Textile, (4) Hosiery, (5) Textile Processing, (6) Industry engaged in the generation and supply of electrical energy, (7) Supply of electrical energy, (8) Industry engaged in the maintenance and conduct of public passenger services by omnibus or tram, (9) Sugar, and (10) Banking. All other industries are amenable to the Industrial Disputes Act. It may, however, be added that some of the provisions of the Industrial Disputes Act are also applicable to industries which are covered by Bombay Industrial Relations Act.

It is now well known that the machinery for settlement of disputes consists of three stages :

i. Negotiations
ii. Conciliation and
iii. Arbitration or adjudication.

Besides, both the Acts provide for constitution of Court of Enquiry. However, the findings of the Court of Enquiry are not binding and it can make recommendations only. Wage Boards for Cotton Textile, Silk Textile and Sugar industries are also constituted under the Bombay Industrial Relations Act. These Boards are comprised of an independent Chairman and equal number of representatives from employers and employees.

There are three Schedules to the Bombay Industrial Relations Act. Schedule I refers to items which are covered under Standing Orders. These items are classification of employees, manner of notification of periods of hours of work, weekly-off, holidays, wage-rates, manner in which notice is to be given to the employees for starting, altering or discontinuing of shifts or departments, procedure to be laid down by the authorities to grant leave or holidays and procedure to be laid down for punishing employees for misconduct, and finally the age of retirement on superannuation. Items covered under Schedule II are reduction or increase in the number of persons employed, rationalisation, withdrawal of any customary concession or privilege, introduction of new rules of discipline, wages, mode of payment, hours of work and rest interval. Schedule III deals with items such as adequate quantity of materials and equipment supplied to the workers, assignment of work, transfer of workers within the establishment, health and safety.

As mentioned earlier all the items in Schedule I to the Bombay Industrial Relations Act, 1946, are covered under the Standing Orders. Model Standing Orders have been framed for all industries except electricity industries and transport industry. Where there are no standing orders certified for a particular establishment the model standing orders are mandatorily applicable to such establishments. It will be advisable that employers follow these standing orders (either the model standing orders or the certified standing orders as the case may be) scrupulously. This will discourage employees going to the courts against the orders of the employers and even if they go to the courts the case of the employers would be strong and they will be in a position to convince the authorities that the action taken by them was legal and just.

So far as items under Schedule II are concerned employers or employees desiring change thereof are required to give notice of change to the other party. Under the Act the parties are allowed to have fifteen days time or such period as mutually extended for direct negotiations. If direct negotiations are not fruitful and the party desires to effect the change it has to send a full report to the Conciliator, Chief Conciliator and the Registrar.

After scrutiny the Conciliator concerned enters the dispute in the register and immediately the conciliation proceedings are deemed to have started. He arranges to call the parties and tries to bring about a settlement. The work of the Conciliator can be facilitated if full facts are supplied to him by the parties. The chances of settlement also increase if the employers make fair and reasonable offers. The employers can also help him by supplying whatever information he wants as expeditiously as possible. In spite of his best efforts, when a settlement is not possible, he has to send his report of failure to the Chief Conciliator. The Bombay Industrial Relations Act empowers the representative union to refer a dispute to Industrial Court for arbitration after obtaining necessary certificate from the Conciliator. In case settlement is not feasible the parties can also jointly agree to refer the dispute to the Industrial Court or private arbitrators for arbitration. It will be worthwhile for employers to consider a joint reference for arbitration in such cases instead of leaving to the union to refer it to be Industrial Court under powers vested in it under the Act. The employees' representatives are also required to follow exactly the same procedure in respect of matters which are not covered under Schedule I or Schedule II.

It is true that the employer can make any change in respect of matters covered under Schedule III unilaterily. However, in the interest of smooth industrial relations it may be advisable to consult the representatives of the employees wherever feasible before effecting any change in respect of Schedule III as well. Such consultations will reduce the number of cases going to the Labour Court, as under the Act the employees can approach Labour Court after referring the matter to the employers in respect of items covered under this Schedule.

The Act also provides for constitution of Joint Committees. The Committees are to have equal number of representatives from employers and employees. Matters which are not important may be discussed in these Joint Committees and solution can be found out. Wherever these Joint Committees exist it is proper for the employers to make best use of such Committees. In the running of the industry there are bound to be a large number of items which can be referred to such Joint Committees. Consultations with the Joint Committees will help in creating good atmosphere, as such consultations will prepare the employees for the coming change. They also get an opportunity to have their say in the matter. This gives some satisfaction to the employees and they feel that they belong to the industry.

Other authorities such as Registrar and Assistant Registrar or Labour Officers and Assistant Labour Officers are constituted or appointed under the Act. The duty of the Registrar is to recognize the undertakings in the industry to which the Act is made applicable. The work of the Registrar will be smooth if the required information is supplied to him fully and quickly. Labour Officers are appointed under the Act to look after the interest of the employees. They have to visit the undertakings quite often. They are also required to collect information from the employers. The duties of the Labour Officers are to watch the interest of the employees and promote harmonious relations between employers and employees. They are also required to investigate into the grievances of the employees and represent to the employer such grievances and recommend to them in consultation with the employees concerned, ways and means to redress the grievances. They are also required to report to the State Government the existence of any industrial dispute of which no notice of change has been given. The work of the Labour Officers will be facilitated if full-hearted co-operation is given to them by the employers.

Under the Act several returns including that of employment are required to be sent to the Registrar by the employers. This may not be a proper forum to enumerate these returns and their details. However, it will be agreed on all sides that if these returns are sent to him giving full information and in time, he will be in a position to keep the information up-to-date.

Industrial Disputes Act, 1947

The machinery envisaged under the Industrial Disputes Act is some-what different from that under the Bombay Industrial Relations Act. Under this Act there is no definite stage laid down for negotiations. However, generally the unions are asked to give reasonable time to the management for direct negotiations. Besides, the disputes at the final stage may go to Industrial Tribunals for adjudication instead of Industrial Court for arbitration. The Act also contains provisions for settlement by direct negotiations in which case the settlements in the prescribed form are required to be sent to the Secretary to the Government of Maharashtra, Industries and Labour Department, Commissioner of Labour and other authorities. Such settlements are binding on the parties which sign the settlement. Provisions have also been made under this Act if parties desire to refer a dispute for private arbitration or adjudication. The award of such private arbitrators and tribunals is legally binding on the parties. Employers would do well to implement these awards without loss of time as otherwise workmen may become dissatisfied and resent delays in implementing the awards by employers. The act also provide penal action against the defaulting employers.

There are four Schedules attached to the Industrial Disputes Act, 1947. The First Schedule enumerates industry which can be declared as "Public Utility" by the appropriate Government. The Second Schedule mentions matters which are within the jurisdiction of the Labour Court and the Industrial Tribunals. These are propriety or legality of an order passed by an employer under the Standing Orders or their application and interpretation, discharge or dismissal of workmen, withdrawal of any customary concession or privilege and declaration of strike or lockout as illegal or otherwise. The Third Schedule falls within the jurisdiction of Industrial Tribunals. The items included in this Schedule are wages and other allowances, hours of work, leave with wages and holidays, bonus, provident fund and gratuity, classification, rationalisation and reduction or increase in the number of workmen. The Fourth Schedule contains items in respect of which an employer desiring change is required to give twentyone days notice to the workmen con-

cerned. If an employer desires any change in respect of these items before effecting the change he should give twenty one days notice. These items are wages and allowances, contribution to provident fund and pension fund, hours of work, leave with wages, classification by grades, rationalisation, reduction or increase of workers and introduction of new rules of discipline or withdrawal of any customary concession or privilege. Such notice to the workmen would help in preparing the workmen for the coming change. In case they wish to raise some issues they can also be tackled during that period. Such procedure, would, therefore, enable a smooth change-over, instead of confronting the workers with a sudden change. In the interest of harmonious relations the employers should invariably give the notices as prescribed by law.

The Industrial Disputes Act makes a provision for constitution of Works Committees. Establishment having 100 or more workmen may be required to constitute such Committee by Government. The Works Committees are to have equal number of representatives from employers and employees. The Works Committees will form a good forum as a Joint Consultation Machinery. Matters which are not very important or of collective bargaining nature can be tackled by these Works Committees.

Certain strikes under Industrial Disputes Act are not illegal. Unless the industry is declared as public utility, the workers can go on strike even if a dispute is pending in conciliation before a Conciliation Officer. It is, therefore, desirable that the disputes in conciliation before the Conciliation Officers are dealt with expeditiously. As under the Bombay Industrial Relations Act here also the employers can help the Conciliation Officers by supplying full information as expeditiously as possible and also by making reasonable and fair offers for settlement. A settlement either by negotiations or conciliation is far better than an award of an Industrial Tribunal. The workmen feel that the managements have conceded to their demands with grace if a settlement is reached, while they might feel otherwise if the employers have to concede to their demands by way of an award. Settlements in or outside conciliation would, therefore, assist in improving industrial relations.

The provisions of Chapter V-A of the Industrial Disputes Act apply to all industries irrespective of whether they are covered by the Bombay Industrial Relations Act or not. This chapter provides for payment of lay-off compensation and retrenchment compensation to the workmen when they are laid-off or retrenched. The lay-off compensation is at the rate of fifty percent of the wages while retrenchment compensation is at the rate of fifteen days' wages for each year of service put in by a workman. In case of retrenchment the workmen are also entitled to a month's notice or a month's pay in lieu of notice. Workmen who have completed one year of service are entitled to these benefits. Provisions of the Act in respect of lay-off are not applicable to industrial establishments in which less than fifty workmen were employed or in which work is done only intermittently or which are of a seasonal character; the provisions regarding retrenchment are applied to all industrial establishments. It is hoped that there might not be any occasion for lay-off or retrenchment. However, unfortunately if they do happen, it will be necessary that the proper procedure as laid down under the law is followed as otherwise the Act also lays down penal action against the defaulting employers.

Under the Industrial Disputes Act even an individual complaint if supported by a substantial number of workmen can be termed as a collective dispute. Any individual complaint or grievances pertaining to individual worker are generally looked into by Government Labour Officers. The complainant or the aggrieved party is required to record his complaint in person in the morning and the Labour Officer calls the parties within about ten days. The Labour Officer uses his good offices to bring about a settlement in such cases. However, if no settlement could be arrived at, the union or worker's representatives can raise a dispute before the Conciliation Officer who after proper enquiry admits the same in conciliation if he is satisfied that it is a fit case for pursuing it in conciliation. In respect of these complaints if the employers give full co-operation to the Government Labour Officers, a large number of complaints and individual grievances could be settled by them. It will be admitted on all sides that no one would like such small matters to prolong and go further. This will also give some relief to the

Conciliation Officers who can devote more attention to complicated collective bargaining disputes. Individual complaints under the Bombay Industrial Relations Act is first referred to the representative union. If the representative union does not desire to take up such complaint, it is referred to the representatives of the employees. If it is still not settled, the employee is advised to take recourse to procedure laid down by labour laws such as to approach Labour Court or Payment of Wages Authorities as the case may be.

There is one vital difference so far as the status of the trade union is concerned under the Bombay Industrial Relations Act and the Industrial Disputes Act. The former Act provides for a sole collective bargaining agent on behalf of the employees. A union having more than fifteen percent membership in an industry in a local area is allowed to register itself as a representative union. Under the Bombay Industrial Relations Act the representative union represents the employees in all those disputes either before the Conciliator or before the Labour Court or the Industrial Court. In case there are more than one union having 15% or more membership in an industry in the local area, the one having larger membership is considered as a representative union, while the Industrial Disputes Act does not recognize a union on industry-wise basis. A trade union having sufficient membership of workers from an establishment is allowed to raise disputes on behalf of the workmen of the said establishment. In case there are more than one union in one establishment and if they have substantial membership, either one or all of them can raise industrial disputes under the Industrial Disputes Act. Such unions are also given opportunity for being heard by Industrial Tribunals or labour courts.

Industrial Employment (Standing Orders) Act

The Bombay Industrial Relations Act is self-contained so far as standing orders are concerned. It also includes provisions regarding standing orders which are discussed earlier. For establishments covered by Industrial Disputes Act, there is a separate enactment viz., Industrial Employment (Standing Orders) Act. This Act is applied to every industrial establishment wherein 100 or more workmen are employed on any day of the

preceding twelve months. By the Bombay Amendment of 1957 to the principal Act the model standing orders have mandatorily been made applicable to every industrial establishment amenable to this Act. There are separate model standing orders for two different categories, namely, workmen doing manual or technical work and for those employed for clerical or supervisory work. These model standing orders are quite exhaustive and give full guidance to the employers for dealing with day-to-day problems in connection with their workers. They lay down procedures to be followed in respect of grant of leave, closure or restarting of shifts or departments and procedure to be followed while taking disciplinary action against workers for misconduct or indiscipline. In fact the standing orders enumerate what should be considered as misconduct on the part of workmen. They also lay down comprehensive procedure to be followed when the misconduct is not of such grave nature that may call for severe punishment. Such comprehensive procedure is essential as the workman concerned should be given full opportunity to defend himself and explain his case, before severe punishment is inflicted on him. The employers and workmen are allowed under this Act to apply for modification or amendment of standing orders. They are certified by the Certifying Officer after giving an opportunity to the opposite party to offer its suggestions, objections, etc., and the aggrieved party can also go in for appeal to the Industrial Court against the order of the Certifying Officer. The Act also requires to display the standing orders in a language understood by the workmen on a special board to be maintained for the purpose. The employers would do well to comply with these provisions, as it enables the workers to become conversant with the standing orders. In fact suitable steps may also be taken to enable the workers to know the standing orders in detail.

Code of Discipline

Labour legislation by itself is not enough for improving and maintaining good employer-employee relations. In the year 1958 the Indian Labour Conference adopted "Code of Discipline in Industry". The Code lays down rights and responsibilities of employers and the unions. The managements and the unions are not to take any unilateral action in connection with any indus-

trial matter and disputes should be settled by them at appropriate level. The parties are also required to utilise the existing machinery for the settlement of disputes with utmost expediency and avoid strikes or lockouts without notice. They are to avoid litigation, sit-down strike, stay-in-strike and lock-outs and they should not take recourse to coercion, victimisation, intimidation or go-slow.

The code also requires that all future differences, disputes and grievances should be settled by mutual negotiations, conciliation and voluntary arbitration. It is also laid down that a grievances procedure upon a mutually agreed basis should be established. This procedure should be such as would ensure speedy and full investigation leading to a settlement.

There are certain obligations on the management only. The managements should not increase work-loads unless agreed upon or settled otherwise. They are not to support or encourage any unfair labour practice such as interference with the rights of employees to enroll or continue as members of trade union. For recognised activities of trade unions the employees should not be discriminated and no restraint or coercion should also be used against them. The managements are also required to take prompt action for settlement of grievances and implementation of settlements, awards, decisions and orders. The managements are also to distinguish between actions justifying immediate discharge and those where discharge should be preceded by a warning, reprimand or suspension or some other form of disciplinary action. Such disciplinary action, if required to be taken, should be subject to an appeal through normal grievance procedure. In cases in which officers and members of the management are found to be responsible for precipitate action by workers leading to indiscipline, the management is required to take disciplinary action against the former, and finally, the managements have to recognize the union in accordance with the criteria evolved at the 16th Session of the Indian Labour Conference held in May 1958.

NOTES ON
BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948
MINIMUM WAGES ACT, 1948
PERSONNEL MANAGEMENT ADVISORY SERVICE

by

Shri R. J. Tamboli,
Deputy Commissioner of Labour, Maharashtra State.

Bombay Shops and Establishments Act.

In the year 1934, Shri R. R. Bakhale made the first attempt to introduce in the then Bombay Legislative Council a bill to prohibit employment of children and limit the hours of work of young persons in shops and to provide for early closing. Even though the public opinion elicited on the bill was overwhelmingly in favour of this bill, the bill was defeated in the Council in March 1936. It was in the year 1939, that the then Government of Bombay took the lead in enacting the Bombay Shops and Establishments Act, 1939. The Act provided for regulating the hours of work and other conditions of employment of persons employed in shops, commercial establishments and public entertainment places.

With the working of the Bombay Shops and Establishments Act, 1939, for several years, certain defects and deficiencies came to light. In the statement on labour policy issued by the Government of Bombay in May 1946, it was announced that the Bombay Shops and Establishments Act, 1939, would be revised and efforts would be made to remove the deficiencies that have been detected. In pursuance of this bill the Government of Bombay appointed Shri R. R. Bakhale to make an enquiry into the working of this Act and to study difficulties that might have been experienced in the administration of the Act. Shri Bakhale was also requested to make recommendations, if necessary, for improvement in the provisions of the Bombay Shops and Establishments Act, 1939, having regard to the needs and interest of all the sections of population affected by the Law. Due to prolonged illness, Shri Bakhale had to request the Government to relieve him of this work. The

Government complied with his request and appointed a Committee consisting of Shri Shantilal H. Shah, as Chairman, and Shri R. R. Bakhale and Shri Chimanlal Shah as members while Shri V. P. Keny, Deputy Director of Labour Administration, was asked to work as Secretary to the said Committee. After taking oral evidence at important places in the State and also the written evidences received from all parts of the State, the Committee submitted its report in December 1947, together with a draft bill to be published for eliciting public opinion. Mainly on the basis of this report but with some modifications, the Government of Bombay introduced a draft bill which was ultimately passed as the Bombay Shops and Establishments Act, 1948. This Act came into force on 11th January 1949. By the year 1953-54 the Act was made applicable to nearly 98 local areas in the then Province of Bombay.

Under this Act, the local authorities were required to submit annual reports about the administration of the Act. These annual reports disclosed that the Act was not administered in the spirit in which it was expected and that its administration in many local areas has been merely nominal. In June 1954, the Government, therefore, appointed a Special Officer to look into the working of the Act and to enquire into its administration by the local authorities in their respective areas and to suggest means for improving the enforcement of the Act.

After the report of the Special Officer was received, Government constituted a supervisory machinery for the administration and enforcement of the Bombay Shops and Establishments Act. The supervisory machinery is set up in the Office of the Commissioner of Labour. *Inter-alia* the functions of the supervisory machinery were to see that the Act was properly administered and enforced by the local authorities in the State and to lay down standard for the enforcement of the Act and for the guidance of the local authorities and their Inspectors. This machinery also made efforts to bring about uniformity in the administration of the Bombay Shops and Establishments Act by the local authorities. In order to achieve its goal the machinery held a number of conferences of Shops Inspectors and Officers of local authorities. It also conducted training courses for the Shops Inspectors

appointed by the local authorities. The machinery also gave whole-hearted cooperation to the Inspectors and other officers of the local authorities in gingering up the enforcement of the Bombay Shops and Establishments Act. It also gave advise to local authorities for educating the employers and giving them and the employees the required guidance. It could also persuade the local authorities in giving publicity to the provisions of the Bombay Shops and Establishments Act.

With the States Reorganisation first in 1956, when the bi-lingual Bombay State was formed, several Shops and Establishments Acts were in force in different regions of the State. The C. P. and Berar Shops and Establishments Act was in force in Vidarbha region, the Hyderabad Act in Marathwada region and the Bombay Shops and Establishments Act, 1948, in the rest of the State. With a view to unifying these Acts, the Bombay Shops and Establishments Act was further amended and the amended Act came into force on 1st October 1961. The amended Act brought new features in its scope. For example, establishments are not only required to be registered but that the registration is required to be renewed every year. Under the old Act, the employees were entitled to 14 days leave with wages for every year of service. In the amended Act, leave with wages was increased to 21 days for a year's service. The Act also provided for pro-rata leave with pay when a worker has not completed one year's service. This rate is that an employee should be allowed leave with pay for not more than 5 days for 60 days on which he has worked.

The Act applies to (1) shops, (2) commercial establishments, (3) residential hotels, restaurants and eating houses, and (4) theatres and other places of public amusements and entertainments. In short, any concern which is not covered under the Factories Act is amenable to the provisions of Bombay Shops and Establishments Act. Factories which employ less than 10 employees and work with power or 20 employees without power are covered by this Act. The Act provides mainly for the opening and closing hours, hours of work, weekly-holiday, over-time working, prohi-

Shops are not generally allowed to be opened earlier than 7.00 a.m. But Shops dealing in milk, vegetables, fruits, fish, meat and bread are allowed to be opened earlier but not before 5.00 a.m. The general closing hours for shops are not later than 8-30 p.m. However, certain shops dealing in pan, bidis are allowed to remain open upto 11.00 p.m. The opening hours of commercial establishments should not be earlier than 8-30 a.m. and they cannot be kept open after 8-30 p.m. Similarly the opening and closing hours of restaurants and eating houses are fixed as 5.00 a.m. and 11.00 p.m. respectively. For theatres and other places of public amusements opening hours are not fixed. But they are not allowed to remain open after 12.00 mid-night.

The Act also lays down that no employee shall be allowed to work for more than 9 hours a day and 48 hours in a week. The employees are required to be given rest interval of at least half an hour after 5 hours of working in a day. Besides, all these establishments are required to give one day in a week as a paid holiday to their employees. For this purpose, the shops and commercial establishments are required to remain closed for one day while the residential hotels, restaurants, eating houses, theatres and other places of public amusements may give such holiday by rotation to their employees as these establishments need not remain closed for a day in a week. Overtime working is required to be paid for at enhanced rate. In Greater Bombay, Minimum Wages Act is applicable and, therefore, the overtime rate will be at double the ordinary rates of wages for work done in excess of 9 hours in a day or 48 hours in a week.

The Act prohibits employment of children in any establishment unless the child is a member of the family of the employer. Thus, children below the age of 12 years should not be employed in any establishment covered by this Act. Similarly, young persons i.e. persons between the age of 12 and 17 years and women of any age are not allowed to work after 7.00 p.m. and before 6.00 a.m.

In respect of annual leave with pay the employers have to give 21 days' leave for their employees who have worked for 240

wages of the employee on which he actually worked during the three months preceding the period of leave. The employees are also required to be paid half the total amount of leave wages due to them before they proceed on leave.

The Act also made a few provisions for the health and safety of the employees. The employers are required to keep the premises clean and free from effluents. The premises are required to be lime-washed or colour-washed at least once in every two years. In certain cases, the local authority can also direct the premises to be lime-washed or colour-washed earlier than this period. Similarly, the wood work in the premises are to be painted or varnished once in seven years. In the interest of the health of the employees the premises are required to be properly ventilated and there should be sufficient light during whole of the working hours. As a precaution against fire, no one is allowed to smoke or use naked light in the immediate neighbourhood of any inflammable material in the establishment. Establishments which carry on manufacturing process are required to keep first aid appliances which include dressings, scissors, iodine, potassium permangnate and antidote for burns.

Minimum Wages Act, 1948

The Industrial Disputes Act and the Bombay Industrial Relations Act have laid down machinery for settlement of disputes. The pre-requisite for utilising this machinery is that the workers should either form a trade union with adequate membership or they should have elected representatives. It was, however, found that in certain industries the workers were not organised or were weakly organised. It was not possible for these workmen to take recourse to collective bargaining. In these industries it was also observed that the labourers were being exploited and there was sweating of labour. In order to give some relief to these categories of workers the Minimum Wages Act, 1948, was passed by the Central Government.

In Bombay, minimum rates of wages have been fixed in respect of the following industries.

(i) Employment in any rice mill, flour mill or dal mill;
(ii) Employment in any tobacco (including bidi making) manufactory;

(iii) Employment in any oil mill;

(iv) Employment under any local authority;

(v) Employment on the constructions or maintenance of roads or in building operations;

(vi) Employment in stone breaking or stone crushing;

(vii) Employment in tanneries and leather manufactory;

(viii) Employment in public motor transport;

(ix) Employment in any industry in which any process of printing by letter press, lithography, photogravure or other similar work or work incidental to such process or book binding is carried on;

(x) Employment in any cotton ginning or cotton pressing manufactory;

(xi) Employment in agriculture;

(xii) Employment in any shop or commercial establishment other than that covered under any of the other entries in the Schedule to the Act.

The Act lays down alternative procedure for fixation of minimum rates of wages. The first method is to appoint a committee having an independent chairman and equal number of representatives of employers and employees in the industry concerned which holds enquiries and advises Government in respect of fixation or revision of wages. The second method is to publish the proposals of Government in respect of such fixation or revision in the official gazette and to fix or revise the minimum rates of wages after two months after considering all representations received by Government during these two months. In this second method the Government appoints committees and on the advice of these committees the minimum rates of wages are fixed. The wages fixed in these industries are consolidated wages which include basic wages as well as dearness allowance.

As recommended by these committees the State is generally divided into various zones and different minimum rates of wages have been fixed for different zones. Similarly, the committees also recommend to Government to fix different minimum rates of wages for different categories of employees in an industry. For

this purpose, the employees are divided into three categories: (1) skilled, (2) Semi-skilled and (3) unskilled. Highest rates of wages are fixed for skilled categories, while lowest rates of wages are fixed for unskilled categories. Similarly, highest rates of wages are fixed for big towns and cities, while lowest rates of wages are fixed for rural areas. It is, therefore, expected that the employers would classify their employees in the approved categories viz: skilled, semi-skilled, or unskilled depending on the skill involved in each job. If this is done properly there should be no complaint of classification in the downward direction.

The Act has also given powers to Government to fix weekly-day of rest and normal working hours. Accordingly, under the Minimum Wage Rules, Government has prescribed a weekly-day rest with the restriction that the employees are not required to work for more than 10 consecutive days. The normal working hours are 9 hours a day and 48 hours in a week. The Act also lays down that an employee should be paid for the full day even if he is given work for part of the day unless the employee himself is unwilling to work for the full day. If an employee is given work for more than the normal hours laid down by the rules the employer has to pay wages at double the ordinary rate of wages except in agriculture. It was also represented to Government that in certain industries the employees are paid in kind by way of meals, tea, snacks or milk. In suitable cases Government allows payment in kind also so as to give facilities to both employers and employees.

The Minimum rates of wages fixed under this Act cannot be considered as fair wages or living wages. These wages are fixed after taking into account the requirements of an employee for the maintenance of his family. Mainly the three absolute needs—food, shelter and clothing—are taken into consideration for fixation of minimum rates of wages. It is, therefore, not too much to expect that the employers would willingly pay at least minimum rates of wages as fixed under this Act.

So far as maintenance of records and registers are concerned, a number of forms have been prescribed. They are: (1) register of fines; (2) register of deductions; (3) overtime register; (4) register of wages; (5) muster-roll; (6) wage-slip; and (7) attendance

cards. These registers and records are prescribed so as to facilitate the enforcement and implementation of the provisions of the Minimum Wages Act and the rules thereunder. However, if some establishments have no practice of making any deduction or fines, the administration does not insist on maintaining registers in that respect. A blank form with remarks that there is no practice of imposing fine or making any deduction is sufficient.

It has been the experience of almost all trade unions the world over that it is most difficult to unite the employees working in certain industries. For instance, it is found very difficult to unite employees working in shops and commercial establishments and distributive trades. Of late these employees have started forming their trade unions or joining trade unions, constitutions of which permit employees from several industries. The provisions laid down under the Bombay Shops and Establishments Act and the Minimum Wages Act are relatively liberal as compared to other labour laws. Employers should not find any difficulty in complying with these laws. Contented labour is an asset to the industry and the employers would do well to see that their labour is content and satisfied. Full compliance of labour laws will be a step in that direction.

Personnel Management Advisory Service

The labour office has started the Personnel Management Advisory Service since May, 1959. It is true that the most of the large concerns have either Personnel Management Departments or Personnel Officers, and the personnel problems of these establishments are dealt with by such departments or officers of their establishments. However, there are large number of issues which may require advice from Labour Office. The Labour Office deals with all types of labour problems connected with industries. With their experience and knowledge they may be in a position to assist the employers in tackling their personnel problems properly. There is no intention whatever either to duplicate or to intrude on the duties and functions of the personnel management departments of the industries. This service should be considered as a complementary to the personal department of the establishments. Besides, there may be concerns which may have to entrust the duties of Personnel Officer to the Secretary or the Manager.

Obviously, such Secretaries and Managers cannot find sufficient time to tackle personnel problems. No one can blame them for this as they have other onerous duties. Such concerns can take advantage of this Service to even a greater extent.

The object of starting this Service is that instead of allowing the disputes to occur and then try to settle them, it would be better to prevent industrial disputes. One may call this pre-mediation service also. If proper advantage of this service is taken, the conflicts between the employers and employees will go down and this may also help to improve industrial relations.

In a democracy where the workers are awake, conflicts and differences are bound to occur. In fact human nature being what it is, it would be too much to expect no differences or conflicts between employers and the employed. What is important is how and at what stage these differences and conflicts are tackled. If they are dealt with at the right time and in the appropriate way they should help in having good employer-employees relations.

BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948

by

Shri N. J. Alvares,

Chief Inspector, Shops and Establishments, Bombay Municipal Corporation

Though Industrial workers in India had their service conditions regulated as far back as 1881, employees working in shops and commercial establishments did not enjoy the protection of any such legislation and it was only in the year, 1939, that the Government of Bombay took the lead in passing legislation regulating the hours of work and other conditions of employment of persons employed in shops, commercial establishments and establishments for public entertainment or amusement known as the Bombay Shops and Establishments Act, 1939. An unfruitful attempt in this respect was earlier made by Shri R. R. Bakhale in 1934 when he introduced in the then Bombay Legislative Council a bill to prohibit the employment of children and to limit the hours of work of young persons in shops and to provide for their early closure. In July 1935, the bill was circulated for eliciting public opinion, and though the public opinion elicited on the bill was overwhelmingly in its favour, the bill was defeated in the Council in March 1936.

In 1940, Sind, Bengal and Punjab followed suit. In 1942, the Central Legislature passed the Weekly Holidays Act providing for a weekly holiday in shops, restaurants, theatres, etc., making it applicable to those provinces where the Provincial Government by notification so directed. In 1947, the Central Provinces and Berar, the United Province of Agra and Oudh, and Madras passed similar Acts. Thus by 1948, most of the provinces had some legislation governing the conditions of work and hours of employment of employees working in shops, restaurants, commercial establishments, theatres and places of public amusement and entertainment.

The working of the Bombay Shops and Establishments Act, 1939, in the province of Bombay brought to light certain defects and deficiencies and in the statement of labour policy issued by the Government of Bombay on 22nd May, 1946, it was announ-

ced that the working of the Bombay Shops and Establishments Act, 1939, would be revised and an early endeavour made to remove them. Shri R. R. Bakhale was accordingly appointed by the Government for the purpose on 2nd June 1946, but in June 1947, he informed Government of his prolonged illness and requested them to relieve him of Chairmanship. The Government complied with his request and appointed a Committee with Shri Shantilal Shah as Chairman and Shri R. R. Bakhale and Shri C. C. Shah as members and Shri V. P. Keni as Secretary to do the work originally assigned to Shri Bakhale. The Committee submitted its report on 31st December 1947 and on the basis of this report, the Government of Bombay introduced a bill which was ultimately passed as the Bombay Shops and Establishments Act, 1948, and came into force on 11th January 1949.

Under Section 43, the administration of the Act had been entrusted to the local authorities subject to such supervision of the Provincial Government as may be prescribed. In the event of default on the part of any local authority in enforcing the provisions of the Act, the Provincial Government had the power to appoint some person or persons to perform these functions and direct that the expenses of performing them be paid by the local authority. The local authorities were required under the Act to submit to the Provincial Government annual reports on the working of the Act within their areas. The annual reports submitted by the local authorities disclosed that the Act had in many areas not been worked in the spirit in which it was expected to be worked and had been merely nominal. Several local areas were also found slack in enforcement after detection of irregularities and Government, therefore, appointed a Special Officer to go round the local areas, study the working of the Act by the local authorities and make suggestions and lay down methods and standards of enforcement. The Special Officer submitted his report in 1955 on the basis of which several provisions of the Act have now been amended and incorporated in the Bombay Shops and Establishments (Extension and Amendment) Act, 1960, which received the assent of the President on 16th June 1961 and came into force from 1st October 1961.

Coming now to the provisions of the Act, we find that the Act deals with five categories of establishments viz. shops, commercial establishments, eating houses and restaurants, residential hotels and lastly theatres and other places of public amusements and entertainment. All these various types of establishments are required under Section 7 to get themselves registered by filling in what is known as 'A' form which contains the name of the establishment and its address, the name of the employer, the category of the establishment and nature of business, names of persons in a confidential or managerial capacity and the total number of employees. A registration fee of Rs. 2.50 for shops having no employees and Rs. 5.00 for other shops and all other categories of establishments has to be paid. Any change taking place in any of these items has to be notified in 'E' form as laid down in Section 8 of the Act. A provision for renewal of the registration certificates annually has now been incorporated under which every establishment has to renew its registration certificate not less than 15 days before its expiry on payment of fees varying from Re. 1.00 for shops having no employees to Rs. 2.50 for all the other shops and categories of establishments. If an establishment is closed down permanently, intimation of this fact has to be given to the Inspector under Section 9 so that the name of the establishment can be removed from the register of establishments. The idea behind annual registration is two-fold, one to give a stable source of revenue to the local authoritits for running the Department which previously depended only on the fines recovered, and secondly to have up-to-date information relating to the number of establishments and the number of employees covered by the Act.

As stated previously, the Bombay Shops and Establishments Act is concerned with the regulation of hours of work in the five different categories of establishments viz. shops, commercial establishments, eating houses and restaurants, residential hotels and theatres and other places of public amusement and entertainment. Each of these different categories of establishments has a different set of provisions so far as the opening and closing hours of establishments are concerned, the hours of work of employees working therein, their spread-over of work, and their weekly holidays.

A shop is defined as any premises where goods are sold, either retail or wholesale, or where services are rendered to customers and includes an office, a store room, godown, warehouse of workplace whether in the same premises or otherwise, mainly used in connection with such trade or business. It will, thus, be seen that besides the ordinary shops where things are sold, establishments such as hair-dressing saloons and laundries where services are rendered to customers come within the definition of a shop.

For the purpose of the opening hour, shops are divided into two categories; shops dealing wholly in milk, vegetables, fruits, fish, meat, bread can be opened at 5 a.m., while all other shops cannot be opened earlier than 7 a.m. But shops dealing in pan, bidi, cigarettes and matches are by Government Order permitted to open at 6 a.m. Similarly for the purpose of the closing hour, shops are again divided into two categories; shops dealing in pan, bidi, cigarettes and matches are allowed to be kept open till 11 p.m. but all other types of shops are to close at 8-30 p.m. However, in order to avoid inconvenience that may be caused to the public, certain types of establishments have, by Government Notifications, been exempted from the opening and closing hours. They are railway bookstalls, shops dealing in petromax and other lanterns, shops dealing in curds, cream and butter and hiring cycles. In order to prevent unfair competition, Section 12 prohibits hawking of articles sold in shops near such shops before the opening hour and after the closing hour.

The hour of work of employees in shops are restricted to 9 hours per day and 48 hours per week. An employee is, however, permitted to work overtime for a period of 3 hours in a week for which he has to be paid $1\frac{1}{2}$ times the normal wages. Thus, the total number of hours that an employee can work in a shop is 51 hours in a week, that is 48 hours plus 3 hours over-time.

No employee is allowed to work for more than 5 hours at a stretch unless he has had an interval of rest of at least one hour. In the larger commercial firms in the City, run on Western lines, though the permissible hours of work are 9 per day or 48 hours per week, employees are required to work for a much

lesser period viz. 6½ or 7 hours per day. A further concession has now been provided under the amended Act by which employees would be permitted to opt for a half-hour rest interval instead of one hour's rest interval as at present, the other half hour being taken away from their hours of work. Thus, where an employee works, say from 10 a.m. to 6 p.m. with one hour's rest interval, for 7 hours, he can now opt for half hour's rest interval and work from 10 a.m. to 5-30 p.m. This is beneficial to the employees living in the far away suburbs. For this purpose the employees have to approach the Secretary to the Government of Maharashtra, Industries and Labour Department.

This work of eight hours or nine hours a day has to be taken within a spreadover of 11 hours, i.e. the hours of work plus the rest interval should not exceed 11 hours. Thus if an employee in a shop comes to work at 9 a.m., the longest he can stay in the shop is till 8 p.m. with 8 hours work and 3 hours rest. There is, however, one proviso to this, namely that where the shop is closed for a continuous period of 3 hours, the spreadover can be increased to 12 hours.

Each shop is required to be closed once a week. In the Act of 1939, every employee in a shop was required to be given a holiday once a week. This could be done by rotation, but it was found that this was being abused and employees were not granted a weekly holiday. The Act of 1948, therefore, provided that every shop should itself be closed once a week. The employer is required to intimate this closed day to the Inspector at the beginning of the year and exhibit the closed day notice at the shop. This ensures that the employee is granted a weekly holiday when the shop is closed.

A new provision has now been incorporated in the Act, permitting the Local Authority in consultation with representative association of employers and employees to fix a day on which the shop or commercial establishment is to be closed, different days being fixed either for different classes of shops and commercial establishments or different days for different parts of the local area except in cases of those shops where the employer has notified at the beginning of the year his intention

to close his shop or commercial establishment on a public holiday within the meaning of the Negotiable Instruments Act, 1881.

For the purpose of making of accounts, stock-taking and settlements, the Act provides that on six days in a year, for this specific purpose, the employees may be allowed to work over-time provided this does not exceed 24 hours. The spread-over on these days is increased to 14 hours.

The next category of establishments is 'commercial establishments'. A commercial establishment has been defined as an establishment which carries on any business, trade, or profession, or any work in connection with or incidental or ancillary to any business, trade or profession, and includes a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on whether for the purposes of gain or not any business, trade or profession or work in connection with or incidental or ancillary thereto. The definition of commercial establishments is so wide as to bring doctors, lawyers, architects, engineers and other professionals within the scope of the Act. It brings within it even trusts, whether for purposes of gain or not, provided they carry on a business, trade or profession.

In the case of commercial establishments also, the Act provides for an opening and a closing hour. No commercial establishment can open earlier than 8-30 a.m. or close later than 8-30 p.m. The hours of work of employees in commercial establishments are the same as those in shops viz. 9 hours in a day or 48 hours a week and overtime of 3 hours in a week. Overtime is, however, permitted just as in the case of shops on 6 days in a year for making accounts and settlements. The spread-over is restricted to 11 hours except on those 6 days when it is increased to 14 hours. One hour's rest interval after 5 hour's work is essential. The amended Act permits half hour's rest interval with the consent of employees as in the case of shops. Every commercial establishment is required to close one day in a week, but in order to avoid inconvenience to the public, certain exemptions from this provision have been granted to doctor's dispensaries, hospitals, section in bank pertaining to safe deposit vaults, lockers or godowns, Code Departments of com-

mercial establishments, establishments of Telegram Commission Agents.

On the closed days of shops and commercial establishments, it is an offence for the employer to call, and the employee to go to the establishment or any other place for any work in connection with the business of the shop or commercial establishment. An employee found doing this can be fined anything from Rs. 10 to Rs. 50, the minimum fine that can be imposed on an employer being Rs. 25.

An eating house or restaurant is defined as any premises in which is carried on wholly or principally the business of the supply of meals or refreshment to the public or a class of public for consumption on the premises. In the case of eating houses and restaurants, opening and closing hours have also been prescribed. No restaurant or eating house can open earlier than 5 a.m. and close later than 11 p.m., but an employee in such restaurant or eating house is permitted to commence work at 4-30 a.m. and work till 11-30 p.m. But by a Government Notification, certain restaurants and eating houses as are permitted by the Police Commissioner are allowed to close at 12 midnight in order to provide for mill workers whose shift ends at that hour.

The hours of work are 9 per day within a spreadover of 14 hours. No employee can work for more than 5 hours at a stretch unless he has had an interval of rest of at least one hour. As it would cause great inconvenience to the public if this class of establishments were required to close once a week, provision has been made for employees to be granted one day's holiday in a week by rotation. The employer is required to notify the weekly holiday of the employee in a notice in the 'D' form and this can be checked by the Inspector to see whether the employee is granted the weekly off. The employers of restaurants, eating houses and residential hotels are required to furnish their employees with identity cards which show the name of the employee, his working hours and his weekly holiday.

Residential hotels by their very nature cannot be asked to conform to any opening or closing hour as they are required to receive guests and travellers. Consequently with the exception of

the opening and closing hours, all the other provisions relating to an eating house or restaurant apply to this type of establishments. A residential hotel has been defined as any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein and include a residential club. As a result, the C.C.I. and the Vallabhbhai Patel Stadium which are residential clubs come within the definition of residential hotels and are governed by the Act.

We come next to the last category of establishments viz. theatres and places of public amusement or entertainment. Here the closing hour has alone been fixed as 12 midnight. The hours of work of employees in theatres are 9 per day, but the overtime permitted here is 6 hours per week instead of 3 hours as in the case of shops and commercial establishments. The spreadover is 11 hours and one hour's rest interval has to be given so that no period of continuous work exceeds 5 hours. As theatres are required to work throughout the week, employees are required to be given a holiday once a week.

In all the cases, whether in shops, commercial establishments, eating houses, restaurants, residential hotels and theatres, the weekly holiday is with pay.

We next come to certain general provisions of the Act relating to young persons and employment of women. The Act provides that no child shall be allowed to work in any establishment. The word child is defined as a person who has not completed his twelfth year. A young person is one who has completed his twelfth year but has not completed his seventeenth year. A young person cannot be allowed to work before 6 a.m. or after 7 p.m. There is a similar restriction on the employment of women. The hours of work of a young person also cannot exceed 6 hours on any day and he has to be given half an hour's rest interval after three hours' work. To these provisions, there are certain exceptions, for instance, nurses in hospitals, women engaged in a managerial or confidential capacity, female attendants for women's cloak-rooms at theatres and female house-keepers in residential hotels and female artists in cabarets.

Special provision also exists as regards leave. Previously every employee who had worked for not less than 270 days during

a year was to be allowed, during the subsequent year, leave, consecutive or otherwise, for a period of not less than 14 days inclusive of the day or days during the period of such leave on which a shop or commercial establishment remains closed. The employee was permitted to accumulate this leave for a period of 28 days. If an employee entitled to such leave was discharged by his employer before he had been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment, the employer was required to pay him the amount for such leave.

Under the amended Act, every employee who has worked for not less than 240 days during a year is to be allowed leave for not less than 21 days and can accumulate such leave to a maximum period of 42 days. Further an employee who has been employed for not less than 3 months in any year shall for every 60 days on which he has worked during the year be allowed leave, consecutive or otherwise, for a period of not more than 5 days. Thus, whereas under the existing Act, a man earns leave for the preceding year, under the amended Act, he earns leave for the same year.

Previously the services of any employee who had been in continuous service for not less than three months, could not be dispensed with, without his being given at least 14 days' notice in writing or wages in lieu thereof. Under the amended Act an employee in continuous service for not less than a year would require 30 days' notice or wages in lieu thereof if his services are to be dispensed with and those having continuous employment for less than a year but more than 3 months would require at least 14 days' notice or wages in lieu thereof. Notice is, however, not necessary if his services are dispensed with for misconduct. Misconduct has been defined as (1) absence from service without notice in writing or without sufficient reasons for seven days or more, (2) going on or abetting a strike in contravention of any law for the time being in force, and (3) causing damage to the property of his employer.

The Act also deals with health and safety provisions. It provides that every establishment, wherein a manufacturing process is carried out, should provide and maintain a first-aid

box. It also provides for painting and whitewashing of every establishment, painting once in seven years and whitewashing once in two years. Record of this is to be maintained in a register in form 'F'.

For the purpose of administration of the Act, the employers are required to maintain certain registers and records. These are the muster roll in H, I, J, K forms, the leave record in 'M' form and leave cards in 'N' form for each employee. As the Payment of Wages Act has been made applicable to establishments governed by the Bombay Shops and Establishments Act, the employers are also required to maintain a Payment of Wage Register in form IIA and to keep a prescribed Visit Book wherein the Inspector visiting the establishment can offer his remarks as to the defects that come to light at the time of his inspection. The Corporation has a staff consisting of one Chief Inspector, one Deputy Chief Inspector, Senior Inspectors and Junior Inspectors for the administration of the Act in the Corporation limits.

Under the amended Act, the Inspectors will now be required to enforce also the provisions of the Minimum Wages Act. The Workmen's Compensation Act has also been made applicable to establishments employing more than 5 employees.

BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948

Shri L. C. Joshi,

Labour Adviser, Bombay Chamber of Commerce and Industry

The present Act which came into force from 11th January 1949 has been mainly enacted with a view to regulating the conditions of work of employees in shops, commercial establishments, residential hotels, restaurants, theatres, other places of public amusement or entertainment, and the manufacturing establishments to which the Factories Act is not applicable. This Act mainly deals with the registration of establishments, fixation of working hours, leave facilities, etc. and its administration has been entrusted to local authorities. For the purpose of carrying out the provisions of this Act, every local authority must appoint a sufficient number of persons as Inspectors for the area subject to its jurisdiction, as it may deem fit. In the areas not subject to the jurisdiction of any local authority, the State Government has been empowered to appoint Inspectors. These Inspectors have wide powers to enter the premises of any establishments, to examine the premises, the prescribed registers, records and notices and to take evidence. The establishments falling within the scope of this Act are also governed by the provisions of the Payment of Wages Act. It may also be mentioned that the Minimum Wages Act has been made applicable to shops and commercial establishments falling within the scope of this Act.

As regards the working of the Act, the following points require consideration.

Bombay Shops and Establishments Act :

(i) Whether Training Establishments of commercial offices are governed by the Bombay Shops and Establishments Act or they have been exempted by virtue of entry 6F of Schedule II of the Act.

(ii) Whether the Act is applicable to clubs which are not open to the public.

(iii) Whether separate registration is required for sub-offices and departments situated away from the main office which is already registered under the Act.

(iv) (a) Whether the period of 3 months specified under Section 35(1) (a) of the Act should be continuous or not.

(b) Whereas under Clause (b), Sub-section (1) of Section 35 of the Act it has been mentioned that the qualifying period for the purposes of leave is 240 working days during the year, it is found that Sub-Section 1A of Section 35 refers to the period of 270 working days. It is necessary to know why this differentiation has been made.

(v) (a) Whether overtime at the statutory rate of $1\frac{1}{2}$ times of the ordinary rate of wages is payable for overtime work done after normal working hours or only for overtime work done after statutory working hours.

(b) Whether overtime is payable to travelling representatives and motor drivers.

Minimum Wages Act :

The Minimum Wages Act, 1948, provides that appropriate Government, Central or State as the case may be, should fix within a specified period minimum rates of wage to employees in the scheduled employment. The scheduled employment notified by the Government of Maharashtra are as under :

(i) Employment in any woollen, carpet making or shawl weaving establishment.

(ii) Employment in any rice mill, flour mill or dal mill.

(iii) Employment in any tobacco (including bidi making) manufactory.

(iv) Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.

(v) Employment in any oil mill.

(vi) Employment under any local authority.

(vii) Employment on the construction or maintenance of roads or in building operations.

(viii) Employment in stone breaking or stone crushing.

(ix) Employment in any lac manufactory.

(x) Employment in any mica works.

(xi) Employment in public motor transport.

(xii) Employment in tanneries and leather manufactory.

(xiii) Employment in Salt Pan Industry.

(xiv) Employment in any residential hotel, restaurant or eating house as defined in Bombay Shops and Establishments Act, 1948.

(xv) Employment in any industry in which any process of printing by letter press, lithography, photogravure or other similar work or work incidental to such process or book binding is carried on.

(xvi) Employment in any shop or commercial establishments other than that covered under any of the other entries in this Schedule.

(xvii) Employment in potteries.

The Act provides for the fixation of (a) a minimum time rate of wages, (b) a minimum piece rate, (c) a guarantee time rate and (d) an overtime rate for different occupations, localities or classes of work and for adults, adolescents, children and apprentices. The minimum rate of wages may consist of (a) a basic rate of wages and a cost of living allowance, (b) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of essential commodities supplied at concessional rates or (c) an all-inclusive rate. Although it has been provided in the Act that normally the payment will be made in cash, the appropriate government has been empowered to authorise the payment of minimum wages either wholly or partly in kind in particular cases.

The appropriate government is also empowered to fix the number of hours per day, provide for weekly holiday and the payment of overtime wages in regard to any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

The Act also empowers the appropriate government to appoint committees and sub-committees to hold enquiries and advise them in fixing and revising minimum rates of wages in respect of any scheduled employment and to appoint an advisory board for the purpose of co-ordinating the work of committees and advising the Government generally in the matter of fixing and revising minimum rates of wages.

The Act makes provision for the maintenance of registers and records in the prescribed manner by establishments covered under the Act, appointment of Inspectors and authorities is to hear and decide claims arising out of payment of wages less than the minimum rates of wages, remuneration for the days of rest or for work done on such days, or overtime wages. The Act also prescribes penalties for offences and lays down a procedure for complaints.

The rules made under the Act provide for provision of Muster rolls and Register of Wages in the prescribed forms. The rules also have prescribed maintenance of several registers and records in the prescribed forms, as for example, (a) Register of fines, (b) Register of deduction for absence from duty or damage or loss caused to the employer, (c) Annual return regarding deduction of wages, (d) Register of overtime, (e) Wage slips, and (f) Monthly cards. It is felt that several of these registers are quite unnecessary in the case of commercial establishments.

Section 26(2A) of the Act provides for exemption from provisions of the Act subject to certain conditions. The State Government has prescribed the limits of wages for purposes of this section in the rules made under the Act.

Personnel Management Advisory Service :

The above scheme was started sometime in May 1959. It has been started with a view to provide a personnel advisory service for the use of small and medium sized establishments. Although it is claimed that the service has proved to be a great success, it is of a very limited use in view of the statutory authorities under the labour enactments.

64-6558